

CHAPTER 1

BUILDER'S AGREEMENT

ADDRESSES AND AUTHORIZED REPRESENTATIVES

The authorized representatives and addresses of the Owner, the Construction Manager and the Professional are:

OWNER:

Representative:
Address:
City, State, Zip:

CONSTRUCTION MANAGER:

Representative:
Address:
City, State, Zip:
Office:
General Contractor's License #:

PROFESSIONAL (Architect):

Representative:
Address:
City, State, Zip:
Office: Mobile: Fax:
E-mail:

Whenever this Contract For Construction refers to "Professional" in the singular, such reference shall mean the Owner's designated representative.

OWNER'S PROJECT IDENTIFICATION INFORMATION:

Project Title:
Project Location
Address:
City, State, Zip:
Project ID Number:
General Project Description:

RECITALS

- A. The Owner intends to construct the Project and is engaging the Construction Manager to furnish or cause to be furnished (i) all labor, equipment, goods and materials now or hereafter required by this Contract For Construction to successfully plan, construct and complete the Work; (ii) all construction management and supervisory services required by this Contract For Construction to successfully plan, construct and complete the Project.
- B. The Owner and Construction Manager each acknowledges that it will act in good faith in carrying out its duties and obligations.
- C. The Owner's engagement of the Construction Manager is based upon the Construction Manager's representations to the Owner that it (i) is experienced in providing construction management services for projects of similar size and complexity to the Project; (ii) is authorized and licensed to perform the type of labor and services for which it is being engaged in the State and locality in which the Project is located; (iii) is qualified, willing and able to perform construction management services for the Project; and (iv) has the expertise and ability to provide construction management services which will meet the Owner's objectives and requirements and which will comply with the requirements of all governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.
- D. The Owner and Construction Manager each acknowledges that it has reviewed and familiarized itself with this Contract For Construction, including the documents enumerated in Article 1, and agrees to be bound by the terms and conditions contained therein.
- E. The Owner intends to engage, or has engaged, one or more Professionals to perform architectural and/or engineering services for the Project, including preparation of Site-specific Construction Documents.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

ARTICLE 1
CONTRACT DOCUMENTS

1.1 The "Contract For Construction" is comprised of the following documents:

This "Chapter 1 – Builder's Agreement (At-Risk Construction Management Guaranteed Maximum Price Form)" (hereafter "Chapter 1"), including the foregoing recitals A. through E., and all attached documents, appendices and addenda;

"Chapter 2 – Construction Manager's Required Services (At-Risk Construction Management Guaranteed Maximum Price Form)" (hereafter "Chapter 2") and all attached documents, appendices and addenda;

"Chapter 3 – General Terms and Conditions of Builder's Contracts" (hereafter "Chapter 3") and all attached documents, appendices and addenda;

Special Conditions, if any;

Proposal(s) submitted by the Construction Manager and accepted by the Owner, if any;

Proposed modifications, if any, dated _____;

The Construction Documents, now existing or issued hereafter;

Any amendments or addenda executed by the Owner and the Construction Manager hereafter;

Approved Change Order(s) or field orders; and

Additional documents listed hereafter, if any:

[Identify with specificity all additional documents, or check that there are none.]

☐ None

☐ Additional Documents: _____

1.2 Documents not included or expressly contemplated in this Article 1 do not, and shall not, form part of this Contract For Construction.

1.3 The Owner shall: *[Select and complete as appropriate]*

☐ furnish the Construction Manager with _____ (____) copies and one reproducible copy of the Construction Documents.

☐ furnish the Construction Manager electronically formatted Construction Documents.

ARTICLE 2 NOTICES

- 2.1 Unless otherwise provided, all notices shall be in writing and considered duly given if the original is (i) hand delivered; (ii) delivered by telex, facsimile, or telecopy; or (iii) sent by U.S. Mail, postage prepaid. All notices shall be given to the addresses set forth above. Notices hand delivered or delivered by telex, facsimile, or telecopy shall be deemed given the next business day following the date of delivery. Notices given by U.S. Mail shall be deemed given as of the second business day following the date of posting.

ARTICLE 3 SCOPE OF CONSTRUCTION MANAGER'S SERVICES

- 3.1 **General Scope Of Services.** Upon execution of this Contract For Construction, the Construction Manager shall commence performance of Pre-Construction Services and upon execution of Appendix E and issuance of a Notice To Proceed by the Owner, the Construction Manager shall commence provision of Construction Services. The parties acknowledge that (i) the Owner may determine not to proceed with Construction Services, (ii) performance of Pre-Construction Services may overlap performance of Construction Services, (iii) categories of Work performed during Construction Services may be performed in separate phases, and (iv) payment of the Construction Manager for Pre-Construction Services shall be separate from payment, if any, for Construction Services.

- 3.1.1 **Scope Of Pre-Construction Services.** The Construction Manager shall furnish and pay for out of the Pre-Construction Services Fee, all Pre-Construction Services required by:

- (i) Chapter 1;
- (ii) Chapter 2, Articles 1, 2 and 4; and
- (iii) Chapter 3.

- 3.1.2 **Scope Of Construction Services.** Upon execution of Appendix E, the Construction Manager shall furnish and pay for out of the Construction Price all Construction Services required by:

- (i) Chapter 1;
- (ii) Chapter 2, Articles 1, 3 and 4; and
- (iii) Chapter 3.

- 3.2 **Self-Performance By The Construction Manager.** *[Select as appropriate]:*

- ☐ The Construction Manager shall not be allowed to self-perform any category of the Work without prior written approval of the Owner.
- ☐ The Construction Manager shall be allowed to bid and, if it is the lowest acceptable bidder, perform the following categories of Work:

- (i) _____
- (ii) _____
- (iii) _____
- (iv) _____

- ☐ The Construction Manager shall be allowed, with the prior written approval of the Owner, to perform categories of Work for which there is no acceptable bidder.

ARTICLE 4 COMPENSATION OF CONSTRUCTION MANAGER

- 4.1 **Compensation For Pre-Construction Services.** The Owner shall pay, and the Construction Manager shall accept, as full and complete payment for the Construction Manager's timely and complete performance of Pre-Construction Services, the Pre-Construction Services Fee.

- 4.1.1 **Pre-Construction Services Fee – Amount.** The Pre-Construction Services Fee shall be: *[Select one of the following]*

- ☐ LUMP SUM FIXED FEE.

The Owner shall pay, and the Construction Manager shall accept as complete payment for performance of Pre-Construction Services, the fixed fee of _____ (\$_____) Dollars. If the scope of the Pre-Construction Services is materially increased through no fault of the Construction Manager, the Pre-Construction Services Fee shall be equitably adjusted.

- ☐ TIME AND MATERIAL NOT TO EXCEED

The Owner shall pay, and the Construction Manager shall accept as complete payment for performance of Pre-Construction Services, a fee based upon services rendered and materials provided; however, the Pre-Construction Services Fee shall not exceed _____ (\$_____) Dollars.

4.1.2 Pre-Construction Services Fee – Payment. *[Select one of the following]*

- ☐ The lump sum fixed Pre-Construction Services Fee shall be paid proportionately to the Pre-Construction Services rendered.
- ☐ The lump sum fixed Pre-Construction Services Fee shall be paid pursuant to the time schedule in Appendix A.
- ☐ The time and material not to exceed Pre-Construction Services Fee shall be paid in accordance with the labor and material rates set forth in Appendix A.
- ☐ Other: _____

4.2 Guaranteed Maximum Price. Prior to performance of Construction Services and in accordance with the requirements set forth in Chapter 2, Article 2, the Construction Manager shall prepare and deliver to the Owner, with a copy to the designated Professional, a Guaranteed Maximum Price ("GMP") proposal *[Select one (1) and complete as appropriate]*

- ☐ upon completion of ____ percent (____%) of the Construction Documents.
- ☐ ____ days after completion of the Construction Documents.
- ☐ no later than _____, 20__.
- ☐ [Other] _____

If the GMP proposal is finalized in accordance with Chapter 2, Paragraph 2.4 and Appendix E hereto is executed by the parties, the Owner shall issue a written notice to the Construction Manager ("Notice To Proceed") establishing the date construction is to commence (the "Commencement Date").

4.3 Compensation For Construction Services. The Owner shall pay, and the Construction Manager shall accept, as full and complete payment for Construction Services, the Construction Price ("the Construction Price") which shall not exceed the Guaranteed Maximum Price ("GMP").

4.3.1 Construction Price – Amount. The Construction Price shall include, and is limited to, the total of:

- (i) the aggregate net cost of the Construction Manager's General Conditions ("General Conditions Cost"), as defined in Chapter 2, Subparagraph 2.4.2, not to exceed the General Conditions Guaranteed Maximum Cost set forth in Appendix E;

- (ii) the aggregate net cost directly paid, or to be paid, by the Construction Manager to subcontractors pursuant to written subcontracts to perform the Work ("Subcontracts Cost"); and
- (iii) the compensation for the Construction Manager's provision of management services pursuant to Chapter 2, Articles 1, 3 and 4 ("Management Fee"), as defined in Chapter 2, Subparagraph 2.4.3, which is: *[Select one (1) and complete as appropriate]*

☐ LUMP SUM FIXED FEE

The Owner shall pay, and the Construction Manager shall accept as its Management Fee, the fixed fee set forth in Appendix E.

☐ FIXED PERCENTAGE OF AGGREGATE SUBCONTRACTS COST

The Owner shall pay, and the Construction Manager shall accept as its Management Fee, _____ (%) percent of the sum total of the Subcontracts Cost.

4.3.2 Construction Price – Payment And Retainage. Within _____ calendar days after receipt by the Owner of the Construction Manager's invoice for the Construction Price, properly prepared and approved pursuant to Chapter 3, Article 15, the Owner shall pay to the Construction Manager _____ percent (____%) of the total amount approved by the Professional, withholding the balance as retainage, unless there is a dispute about the amount of compensation due the Construction Manager. The date on which payment is due shall be referred to as the "Payment Date".

4.4 Compensation For Change Orders. Amounts owed by the Owner to the Construction Manager shall be adjusted by duly authorized Change Order.

4.4.1 Change Order – Material Increase In Scope. For change orders materially increasing or decreasing the Construction Manager's scope of services, the Construction Manager's Pre-Construction Services Fee and Management Fee shall be equitably adjusted.

4.4.2 Change Order – Increase In Subcontracts Cost. If the Subcontracts Cost is increased by change order, the Owner shall pay the Construction Manager the aggregate net cost directly paid by the Construction Manager to subcontractors or suppliers for performance of the Work. If the Management Fee is being paid by the Owner to the Construction Manager on a "Fixed Percentage Of Aggregate Subcontracts" basis, the Management Fee shall be increased according to the percentage set forth in Chapter 1, Subparagraph 4.3.1 above; if the Construction Manager is being paid on a lump sum fixed fee basis, the Construction Manager shall receive no additional Management Fee.

4.4.3 **Change Order – Decrease In Subcontracts Cost.** If the Subcontracts Cost is decreased by change order, payment due from the Owner to the Construction Manager shall be reduced by the amount the Construction Manager is no longer obligated to pay subcontractors or suppliers for performance of the Work. If the Management Fee is being paid by the Owner to the Construction Manager on a “Fixed Percentage Of The Aggregate Subcontracts” basis, the Management Fee shall be decreased according to the percentage set forth in Chapter 1, Subparagraph 4.3.1 above; if the Construction Manager is being paid on a lump sum fixed fee basis, the Construction Manager’s Management Fee shall not be reduced.

4.4.4 **Change Order – Disputed.**

- .1 If the Construction Manager disputes a change order decision pursuant Chapter 3, Paragraph 9.7, it must give the Owner its written notice of dispute, including the reasons therefore, within _____ calendar days of the disputed decision.
- .2 For change orders directed by a Professional to be performed by the Construction Manager on a time-and-materials basis pursuant to Chapter 3, Subparagraph 9.5.1, the Owner shall pay the Construction Manager the actual incurred cost and expenses paid to those subcontractors and suppliers performing the Work, plus a markup of _____ percent (____%) for the change order Work performed by its own forces. If the Management Fee is being paid by the Owner to the Construction Manager on a “Fixed Percentage Of Aggregate Subcontracts” basis, the Management Fee shall be increased according to the percentage set forth in Chapter 1, Subparagraph 4.3.1 above; if the Construction Manager is being paid on a lump sum fixed fee basis, the Construction Manager shall receive no additional Management Fee.

4.5 **Liquidated Damages.** If liquidated damages are assessed pursuant to Chapter 3, Article 17, such damages shall be calculated at the rate of _____ (\$_____) Dollars per calendar day for failure to meet the required date of Substantial Completion, or fifteen (15%) per cent thereof for failure to meet the required date of Final Completion.

ARTICLE 5 SPECIFIC INSURANCE REQUIREMENTS

[Select one as appropriate]:

- ☐ 5.1 **Owner-Provided Insurance Program.** The Owner shall provide insurance under an Owner-Provided Insurance Program and the Construction Manager is not required to provide insurance. The Construction Manager will communicate and cooperate with the Owner and the Owner’s insurance broker, as required.

- ☐ 5.2 **Construction Manager-Provided Insurance Program.** The Construction Manager shall provide insurance and the Owner is not required to provide insurance. The Owner will communicate and cooperate with the Construction Manager and the Construction Manager's insurance broker, as required.

5.1.1 The Construction Manager shall purchase and maintain at all times that it is performing services under this Contract For Construction, at its expense, from a company or companies authorized to do business in the state in which the Project is located, insurance policies containing the following selected types of coverages and minimum limits of liability protecting from claims which may arise out of or result from the performance or non-performance of services under this Contract For Construction by the Construction Manager or by anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable:

- (i) Workers' Compensation, Disability Benefit, or similar employee benefit act coverage, and employer's liability coverage, as required by the state in which the Project is located.

[Select one as appropriate]:

☐ The cost of such insurance is included in the Construction Manager's Management Fee as part of the Construction Manager's profit and overhead.

☐ Other _____

- (ii) Commercial General Liability which (a) includes premises/operations, product/completed operations, contractual liability, independent contractors, broad-form property damage, underground, explosion and collapse hazard, and personal / advertising injury; and (b) names the Owner and the Owner's Related Parties as additional insureds, with per-occurrence limits of not less than

_____ (\$_____,000) Dollars.

[Select one as appropriate]

☐ The cost of such insurance is included in the Construction Manager's Management Fee as part of the Construction Manager's profit and overhead.

☐ Other _____

- (iii) Commercial Comprehensive Automobile Liability which includes contractual liability coverage and coverage for all owned, hired and non-owned vehicles with limits of not less than

_____ (\$_____,000) Dollars per accident for bodily injury and property damage, or

_____ (\$_____,000) Dollars
combined single limit.

[Select one as appropriate]

☐ The cost of such insurance is included in the Construction Manager's Management Fee.

☐ Other _____

- (iv) Builder's Risk Insurance which (a) includes without duplication, but is not limited to, fire (with extended coverage), theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal; and (b) names the Owner and the Owner's Related Parties, with coverage for one hundred (100%) percent of the insurable value of the Construction Manager's scope of the Work, and a per-claim deductible of

_____ (\$_____,000) Dollars.

[Select one as appropriate]

☐ The cost of such insurance is included in the Construction Manager's General Conditions Cost.

☐ Other _____

- (v) Other Insurance

[Describe type, limits, extent of coverage, insureds and other pertinent information for additional insurance requirements, or state that there are none]

ARTICLE 6 PERSONNEL, SUBCONTRACTOR, SUPPLIER AND CONSULTANT CHARTS

- 6.1 The Construction Manager shall prepare and attach as Appendix B to this Chapter the Construction Manager's Personnel Chart which lists by name, job category, responsibility and hourly rate, the Construction Manager's primary employees who will work on the Project. The Construction Manager shall promptly inform the Owner in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). The Owner shall have the right to reject any proposed replacement.
- 6.2 At the conclusion of Bidding and Negotiation Services contained in Chapter 2, Article 3, the Construction Manager (i) shall prepare and attach as Appendix C to this Chapter the Construction Manager's Subcontractors and Suppliers Chart which lists by name and general Project responsibility each subcontractor and supplier who will be utilized by the Construction Manager to provide goods or services with respect to the Project; (ii) shall

not enter into any agreement with any subcontractor or supplier to which the Owner raises a reasonable, timely objection; and (iii) shall promptly inform the Owner in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). The Owner shall have the right to reject any proposed replacement.

- 6.3 The Owner shall prepare and attach as Appendix D to this Chapter the Owner's Consultants Chart which lists by name and general duties each consultant retained by the Owner to provide services with respect to the Project. The Owner reserves the right to engage any other consultants which it may deem necessary or desirable.

ARTICLE 7 CONSTRUCTION SCHEDULE, SPECIFIC BOND REQUIREMENTS, PAYMENT SCHEDULE AND QUALITY CONTROL AND TESTING

7.1 Time For Performance.

7.1.1 **Delivery Of Pre-Construction Services.** The Construction Manager shall commence delivery of its Pre-Construction Services on _____ and shall deliver such services in a prompt and expeditious manner so as not to delay the Owner or the Professional(s).

7.1.2 **Commencement Of Construction.** The Construction Manager shall commence construction on the date set forth in a written Notice to Proceed issued by the Owner. (the "Commencement Date").

7.1.3 **Substantial Completion.** The Construction Manager shall accomplish Substantial Completion of the Work on or before a date to be agreed upon and set forth in Appendix E to this Chapter (the required "Date of Substantial Completion").

7.1.4 **Final Completion.** The Construction Manager shall accomplish Final Completion of the Work on or before thirty days following Substantial Completion of the Work (the "required date of Final Completion").

7.2 Construction Schedule. The Construction Manager shall *[Select one (1)]*

☐ not less than _____ calendar days after execution of Appendix E or

☐ no later than *[Insert date certain]* _____

prepare and submit a final Construction Schedule to the Owner and the Professional for their review and acceptance pursuant to Chapter 2, Subparagraph 2.3.1 and Chapter 3, Paragraph 16.1 of this Contract For Construction.

7.3 **Schedule Of Values.** Within _____ calendar days after execution of Appendix E to this Chapter, the Construction Manager shall prepare and present to the Owner and the designated Professional Appendix F to this Chapter, the Construction Manager's Compensation Schedule which includes, as applicable:

- ☐ A. Schedule of values for payment of the Subcontracts Cost and General Conditions Cost;
- ☐ B. Time Schedule for payment of the Management Fee;
- ☐ C. Unit prices and estimated number of units for compensation for services rendered and goods supplied on a unit-price basis;
- ☐ D. Rates for compensation for services rendered on a time-and-material basis;
- ☐ E. Compensation for goods furnished on a time-and-material basis; and
- ☐ F. Allowances.

7.4 **Bond Requirements.** *[Check one (1) box in each paragraph]*

7.4.1 The Construction Manager (☐shall) (☐shall not) be required to provide payment and performance bonds, each having a penal sum equal to the GMP. The amount of the premiums for such bonds shall be included in the GMP.

7.4.2 The Construction Manager (☐shall) (☐shall not) be required to provide a maintenance bond. If so, the penal sum of the bond shall be _____ (\$____,000) Dollars.

7.4.3 Payment for bonds shall be as follows: *[Select one (1) as appropriate]*

- ☐ The cost of required bonds shall be included in the General Conditions Guaranteed Maximum Cost and paid by the Owner to the Construction Manager as a part of the General Conditions Cost.
- ☐ Other _____

7.5 **Quality Control And Testing.** *[Select one as appropriate]:*

- ☐ The Owner shall select the quality control and testing agencies.
- ☐ The Construction Manager shall select the quality control and testing agencies.

[Select as appropriate]:

- ☐ The cost of specified measures and tests required by the Construction Documents shall be included in the General Conditions Guaranteed Maximum Price and shall be paid by the Owner to the Construction Manager as a part of General Conditions Cost.
- ☐ Other _____

ARTICLE 8 AMENDMENTS TO CHAPTER 3

- 8.1 The following additions to, deletions from and/or modifications to the specifically referenced articles and paragraphs of Chapter 3 shall take precedence over the provisions of those referenced articles and paragraphs as follows:

[State the reference to each such article and paragraph and how the language is to be added to, deleted from or modified, or state "None"]

[Insert legal name of Owner]
("Owner")

By: _____

Its: _____

Date: _____

[Insert legal name of Construction Manager]
("Construction Manager")

By: _____

Its: _____

Date: _____

[Insert Corporate Seal If Required]

APPENDIX A
CONSTRUCTION MANAGER'S COMPENSATION SCHEDULE
FOR PRE-CONSTRUCTION SERVICES

[Insert information as appropriate based on payment method selected]

- ☐ Time schedule for payment of the Pre-Construction Services Fee on a lump sum fixed fee basis

OR

- ☐ Compensation for Pre-Construction Services rendered on a time-and-material, not-to-exceed basis:
- A. Labor rates
 - B. Compensation rates for goods and materials
 - C. Allowance / reimbursement limits, inclusions and exclusions

APPENDIX B

CONSTRUCTION MANAGER'S PERSONNEL CHART

[Insert information as required]

For each of the Construction Manager's primary employees working on the Project, list:

- A. Name
- B. Job category
- C. Responsibility

APPENDIX C
CONSTRUCTION MANAGER'S SUBCONTRACTORS AND SUPPLIERS CHART

[Insert information as required]

APPENDIX D OWNER'S CONSULTANTS CHART

[Insert information as required]

Lists by name and general duties each consultant retained by the Owner to provide services with respect to the Project.

APPENDIX E
AUTHORIZATION FOR CONSTRUCTION

Pursuant to Chapter 1, Article 3 and Chapter 2, Article 2 of the Contract For Construction between _____ ("Owner") and _____ ("Construction Manager"), for _____, the Owner and the
(the Project)
Construction Manager hereby execute this Appendix E and further agree as set forth below.

1. The Construction Manager's Guaranteed Maximum Price ("GMP") proposal dated _____, attached hereto and incorporated herein, is accepted by the Owner.
2. The General Conditions Guaranteed Maximum Cost is _____ (\$_____).
3. The Subcontracts Cost is _____ (\$_____).
3. If applicable, the Lump Sum Fixed Management Fee Is _____ (\$_____).
4. The Guaranteed Maximum Price is _____ (\$_____).
5. The Date of Substantial Completion shall be _____.

This _____ day of _____, 20____.

[Insert legal name of Owner]
("Owner")

By: _____

Its: _____

Date: _____

[Insert legal name of Construction Manager]
("Construction Manager")

By: _____

Its: _____

Date: _____

[Insert Corporate Seal If Required]

APPENDIX F

CONSTRUCTION MANAGER'S COMPENSATION SCHEDULE

[Insert information as required]

- A. Schedule of values for payment of the Subcontracts Cost and General Conditions Cost

- B. Time Schedule for payment of the Management Fee

- C. Unit prices and estimated number of units for compensation for services rendered and goods supplied on a unit-price basis

- D. Rates for compensation for services rendered on a time-and-material basis

- E. Compensation for goods furnished on a time-and-material basis

- F. Allowances

**CONTRACT FOR CONSTRUCTION
(At-Risk Construction Management
Guaranteed Maximum Price Form)**

**CHAPTER 2
BUILDER'S REQUIRED SERVICES**

**ARTICLE 1
GENERAL PROJECT SERVICES**

- 1.1 **Essential Services.** The Construction Manager agrees to provide all services required to professionally complete the Work in an expeditious and economical manner consistent with this Contract For Construction and the best interests of the Owner.
- 1.2 **Compliance With Contractual Requirements.** At all times the Construction Manager is performing services, it shall comply with the requirements set forth in Chapter 1, Chapter 2 and Chapter 3 of this Contract For Construction.
- 1.3 **Cooperative Effort.** The Construction Manager shall, in consultation with the Owner, Professional(s), and the subcontractors, endeavor to develop, implement and maintain a spirit of cooperation, collegiality, and open communication among the parties so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and, upon completion, the Project is deemed a success by all parties.
- 1.4 **Additional Or Modified Required Services.** Additional or modified required services, if any, included in General Project Services are listed in Appendix 1 and incorporated herein by reference.

**ARTICLE 2
PRE-CONSTRUCTION SERVICES**

- 2.1 **Preliminary Design Review.**
 - 2.1.1 The Construction Manager shall actively and jointly participate with the Owner and the Professional(s) in formation of the final Project design.
 - 2.1.2 The Professional is required, in accordance with schedule requirement, to provide preliminary design drawings. The Construction Manager shall promptly and in accordance with schedule requirements:
 - (i) familiarize itself with the preliminary design drawings;
 - (ii) analyze and evaluate the constructability of the preliminary design drawings; and

- (iii) analyze and evaluate the preliminary design drawings in regard to the completeness of intended bid categories, conflicts or overlaps in the divisions of the Work, design details affecting construction, value engineering, identification of long-lead materials affecting the Construction Schedule, availability of labor and other factors affecting construction.

2.1.3 The Construction Manager and the Professional(s) shall jointly schedule and attend regular meetings with the Owner to review and evaluate the preliminary design drawings.

2.1.4 The Construction Manager shall, in accordance with schedule requirements, notify the designated Professional in writing and assist the Professional(s) with the resolution, of all problems, conflicts, defects or deficiencies identified during the review and evaluation of the preliminary design drawings.

2.1.5 Upon completion of the preliminary design drawings, the Professional is required, in accordance with schedule requirement, to prepare and submit a preliminary estimate of Total Project Construction Cost broken down by line item into major construction disciplines and systems.

2.1.6 The Construction Manager shall, in accordance with schedule requirements, review the preliminary estimate of Total Project Construction Cost and promptly inform the Owner and Professional of recommended adjustments, if any.

2.2 **Construction Documents Review.**

2.2.1 The Professional is required, in accordance with schedule requirements, to provide Review Construction Documents and other information.

2.2.2 The Construction Manager shall, in accordance with schedule requirements, review applicable Construction Schedule(s), the estimate of Total Project Construction Cost, the cost of local utilities, fees for permits and licenses, any modifications necessitated by local conditions, other information necessary for a full understanding of the Project, and the review Construction Documents. The Construction Manager shall:

- (i) examine the review Construction Documents for clarity, adequacy of detail, consistency, accuracy and completeness;
- (ii) identify conflicts, omissions or overlaps in the proposed divisions of the Work, evaluate the completeness of intended bid categories, and identify unusual design details affecting construction cost and schedules;
- (iii) apply established value engineering principles and practices to reduce the cost of the Project;
- (iv) identify factors with the potential to impact the Construction Schedule such as

materials with long lead time, the unavailability of required labor, and other factors and make suggestions for acceptable alternatives;

- (v) evaluate and make suggestions to optimize Site utilization;
- (vi) recommend proposed modifications or alternatives to the review Construction Documents based on its evaluation and review;
- (vii) notify the Owner and the Professional(s) in writing of any variances between the Construction Documents and applicable laws, statutes, building codes, rules and regulations of which it is aware; and
- (viii) notify the Owner and the Professional(s) in writing of all problems, conflicts, defects or deficiencies in the review Construction Documents of which it is aware or should be aware.

2.2.3 The Construction Manager shall, in accordance with schedule requirements, assist the Professional with the resolution of all problems, conflicts, defects or deficiencies identified during the review and evaluation of the review Construction Documents.

2.2.4 Upon completion of the examination of the review Construction Documents, the Professional is required, in accordance with schedule requirements, to prepare and submit a final estimate of Total Project Construction Cost.

2.2.5 Upon completion of the examination of the review Construction Documents, the Construction Manager, in accordance with schedule requirements, shall prepare and submit a final estimate of Total Project Construction Cost.

2.2.6 If the final estimates of Total Project Construction Cost by the Construction Manager and the Professional differ materially, the Construction Manager and Professional shall meet promptly to reconcile the discrepancies between their estimates so as to permit submission to the Owner of a final estimate of Total Project Construction Cost on which both the Professional and the Construction Manager agree.

2.3 Planning And Scheduling.

2.3.1 **Construction Schedule.** The Construction Manager understands and acknowledges the Owner's intent that the Project will be complete by the Date of Substantial Completion. The Construction Manager shall timely prepare and submit the Construction Schedule for the Owner's review and approval. The Construction Schedule shall complement, and shall not conflict with, the Design Schedule.

2.3.2 The Construction Manager shall establish and timely submit for Owner review:

- (i) Project cost control procedures;
- (ii) Project reporting procedures;

- (iii) Project Manual;
- (iv) Quality Management Program;
- (v) MBE/WBE participation plan; and
- (vi) Staffing Plan for the Construction period.

2.4 **Guaranteed Maximum Price Proposal.**

2.4.1 Guaranteed Maximum Price Proposal. The Construction Manager shall prepare and deliver to the Owner, with copies to the Professional, a Guaranteed Maximum Price ("GMP") proposal. The Construction Manager shall, at a minimum, include in the GMP proposal:

- (i) a recital of the specific Construction Documents, including drawings, specifications, and all addenda thereto, used in preparation of the GMP proposal;
- (ii) the three elements of the Construction Contract Price, as defined in Chapter 1, Paragraph 4.3, including:
 - a) a General Conditions Guaranteed Maximum Cost, including line item detail of the component parts as defined in Chapter 1, Subparagraph 4.3.1 (i) and Chapter 2, Subparagraph 2.4.2;
 - b) estimated Subcontracts Cost, as defined in Chapter 1, Subparagraph 4.3.1 (ii), detailed by each subcontract, trade or bid division, and including a reasonable, separately stated maximum contingency amount for each subcontract, trade or bid division; and
 - c) the actual or estimated amount of the Management Fee, as applicable, as defined in Chapter 1, Subparagraph 4.3.1 (iii) and Chapter 2, Subparagraph 2.4.3;
- (vi) a description of all other inclusions to or exclusions from the GMP;
- (vii) all assumptions and clarifications;
- (viii) the proposed Date of Substantial Completion upon which the GMP is based;
- (ix) an outline of preliminary Construction Schedule showing proposed start and finish dates of major components of construction; and
- (xi) the date by which the GMP proposal must be accepted by the Owner.

2.4.2 **General Conditions Cost.** Items within the General Conditions Cost for which

the Construction Manager is entitled to no additional compensation include, without limitation:

- (i) costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value;
- (ii) costs incurred to provide site safety;
- (iii) costs of removal of debris from the site;
- (iv) costs of document reproduction including bid sets, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office;
- (v) that portion of the reasonable expenses of the Construction Manager's personnel incurred while traveling in discharge of duties directly connected with the Work;
- (vi) that portion of insurance and bond premiums that can be directly attributed to this Contract for Construction. Premiums shall be net of trade discounts, volume discounts, dividends and other adjustments;
- (vii) sales, use or similar taxes imposed by a governmental authority and paid by the Construction Manager, and directly related to the Work;
- (viii) fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract for Construction to pay;
- (ix) data processing costs directly related to the Work; however, these costs shall not include any hardware, software, or CADD costs unless approved by the Owner in writing;
- (x) expenses incurred in accordance with the Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved by the Owner;
- (xi) the cost of obtaining and using all utility services required for the Work;
- (xii) the cost of crossing or protecting any public utility, if required, and as directed by the Owner;
- (xiii) all reasonable costs and expenditures necessary for the operation of the site office, such as stationary, supplies, blueprinting, furniture, fixtures, office equipment and field computer services, provided that quantity and rates are subject to Owner's prior written approval;

- (xiv) the cost of secure off-site storage space or facilities approved in advance by Owner;
- (xv) printing and reproduction of the Construction Documents;
- (xvi) rental charges for temporary facilities, and for machinery, equipment, and tools not customarily owned by construction workers; however any rental charge shall not exceed the purchase price of such facilities, machinery, equipment or tools; and
- (xvii) other expenses or charges properly incurred and paid in the prosecution of the Work, with the prior written approval of the Owner.

2.4.3 Management Fee. Items within the Management Fee for which the Construction Manager is entitled to no additional compensation include, without limitation:

- (i) direct costs incurred with the exception of those specifically enumerated compensable as a General Conditions Cost or a Subcontracts Cost;
- (ii) wages, salaries, bonuses and incentive compensation, of the Construction Manager's supervisory, technical, administrative and clerical personnel engaged in supervision and management of the Work on or off the Project Site, including all company overhead and expenses
- (iii) the cost of Construction Manager's home or branch office employees or consultants not at the Project Site;
- (iv) cost of fringe benefits, contributions, assessments and taxes, including for example such items as Unemployment Compensation and Social Security, to the extent that such cost is required by law and is based on the compensation paid to the Construction Manager's employees referred to in subparagraphs (ii) and (iii) above;
- (v) non-field office (home and branch office) operational expenses such as telegrams, telephone service and long-distance and zone telephone charges, postage, office supplies, expressage, and other similar expenses;
- (vi) data-processing costs indirectly related to the Work; including hardware, software, and CAD costs;
- (vii) personnel expenses and temporary living allowances incurred due to relocation of personnel required for the Work;
- (viii) cost of all non-project specific insurance;
- (ix) all general operating expenses;
- (x) all capital expenses, including any interest;

- (xi) all sales, use or similar taxes related to the Project imposed by any governmental authority on the Construction Manager's services and non-reimbursable costs;
- (xii) any costs which would cause the Construction Price to exceed the GMP; and
- (xiv) any costs or expenses incurred by the Construction Manager, not included in the General Conditions Cost, for provision of management services necessary to complete the Project in an expeditious and economical manner consistent with this Contract For Construction and the best interests of the Owner.

- 2.4.4 The Construction Manager acknowledges that the Construction Documents may be incomplete at the time the Construction Manager delivers the GMP proposal, and that the Construction Documents may not be completed until after commencement of the Work. Nevertheless, the GMP proposal shall include payment for Work required by the completed Construction Documents, and if the GMP proposal is accepted by the Owner, the Construction Manager shall be entitled to no increase in the GMP if the Work required by the completed Construction Documents (i) is required by this Contract For Construction, (ii) is reasonably inferable from the incomplete documents, (iii) is consistent with the Owner's stated goals and program objectives, (iv) is consistent with general industry standards for completion of the Work, (v) is not a substantial enlargement of the scope of Work portrayed by the incomplete documents, or (vi) substantially conforms to the nature, type, kind or quality of Work depicted in the incomplete documents.
- 2.4.5 If the GMP proposal is unacceptable to the Owner, the Owner shall promptly so notify the Construction Manager in writing. Within fourteen calendar days of such notification, the Owner, Professional(s) and Construction Manager shall meet to discuss and resolve any differences, inconsistencies, or misunderstandings and to negotiate recommended adjustments to the Work and/or to the GMP.
- 2.4.6 The Owner may, at its sole discretion and based upon its sole judgment, (i) indicate its acceptance of a GMP proposal; (ii) reject a GMP proposal; (iii) terminate the Project; or (iv) proceed to construct the Project using a party or parties other than the Construction Manager.
- 2.4.7 If the Owner rejects a GMP proposal, neither party shall have any further obligation pursuant to the Contract For Construction.

- 2.4.8 If the Owner accepts a GMP proposal, the parties shall complete and execute Appendix E attached to Chapter 1, and the Owner shall issue a written notice to the Construction Manager ("Notice To Proceed") establishing the date construction is to commence (the "Commencement Date"). The Construction Manager shall not expend any monies for construction prior to receipt of such Notice to Proceed without the written approval of the Owner.

2.5 Price Guarantees.

- 2.5.1. Upon execution of Appendix E, the Construction Manager guarantees that the Construction Price shall not exceed the GMP. All costs or expenses that would cause the Construction Price to exceed the GMP shall be borne by the Construction Manager unless adjusted by change order.
- 2.5.2 Upon execution of Appendix E, the Construction Manager guarantees that the General Conditions Cost shall not exceed the General Conditions Guaranteed-Maximum Cost and that all costs or expenses that would cause the General Conditions Cost to exceed the General Conditions Guaranteed-Maximum Cost shall be borne by the Construction Manager unless adjusted by change order.
- 2.5.3 Upon execution of Appendix E, the Construction Manager guarantees that, (i) unless adjusted by change order, the final cost to the Owner of each individual subcontract, trade or bid division shall not exceed the sum total of the estimated cost and contingency for that subcontract, trade or bid division as set forth in the GMP; (ii) no unused contingency amount from any subcontract, trade or bid division shall be transferred, carried over or applied to any other subcontract, trade or bid division, but rather such unused contingency shall inure to the Owner's benefit; and (iii) the cost of any subcontract, trade or bid division exceeding the sum total of the estimated cost and contingency for that subcontract, trade or bid division shall be borne by the Construction Manager unless adjusted by change order
- 2.5.4 Upon execution of Appendix E, the Construction Manager guarantees that to the extent the GMP proposal includes contingencies, no unused contingency shall be transferred, carried over or applied to any other GMP line item, but rather such unused contingency shall inure to the Owner's benefit.

- 2.6 **Additional Or Modified Required Services.** Additional or modified required services, if any, included in Pre-Construction Service are listed in Appendix 1 and incorporated herein by reference.

ARTICLE 3 CONSTRUCTION SERVICES

3.1 Bidding And Negotiation.

- 3.1.1 With the Professional's assistance, the Construction Manager shall prepare and assemble document packets for use in bidding or negotiating the Subcontracts Cost.

- 3.1.2 The Construction Manager shall develop subcontractor and supplier interest for each division of the Work and shall pre-qualify proposed subcontractors using a pre-qualification form approved by the Owner and Professional.
- 3.1.3 The Construction Manager shall:
 - (i) submit to the Professional the proposed list of subcontractors and review and evaluate information received from the Professional regarding proposed subcontractors; and
 - (ii) evaluate the technical competence of all pre-qualified subcontractors.
- 3.1.4 The Construction Manager shall negotiate or competitively bid each trade category only by invitation to pre-qualified subcontractors. In the event a subcontractor does not meet a pre-qualification requirement, the Construction Manager in its best judgment may, with the Owner's prior approval, still allow the subcontractor to bid.
- 3.1.5 The Construction Manager shall review the subcontract breakdowns utilized in the GMP and use its best efforts to obtain bids which are less than the final GMP estimates.
- 3.1.6 The Construction Manager shall conduct private bid openings in the presence of the Owner's Representative. The Construction Manager shall communicate bid results to the Owner and Professional, and to no other persons or entities.
- 3.1.7 The Construction Manager shall, for each subcontract, trade or bid division:
 - (i) determine the final bid amounts,
 - (ii) prepare and furnish to the Owner a bid tabulation which includes by subcontract, trade and/or bid division, the applicable final GMP estimate and the related final bid amount;
 - (iii) identify to the Owner in writing the subcontractors to which the Construction Manager recommends award of subcontracts; and
 - (iv) award and enter into a subcontract between itself and each subcontractor which it has recommended pursuant to Paragraph 3.1.7 (iii) unless otherwise notified by the Owner.

3.2 Construction Supervision.

- 3.2.1 Commencing with the award of the first subcontract and terminating on the Date Of Final Completion, the Construction Manager shall provide the services described in Subparagraphs 3.2.1 through 3.2.7.
- 3.2.2 The Construction Manager shall, as the Owner's construction representative during construction, advise and consult with the Owner and the Professional(s), and provide administration of the Construction Documents.

- 3.2.3 The Construction Manager shall supervise and direct the Work at the Site. The Construction Manager shall, at a minimum, staff the Project Site with personnel who shall:
- (i) supervise and coordinate the Construction Manager's personnel and act as its primary liaison with the Owner and the Owner's Consultant(s);
 - (ii) coordinate trade contractors and suppliers, and supervise Site construction management services;
 - (iii) be familiar with all trade divisions and trade contractors' scopes of Work, all applicable building codes, the Construction Documents, and this Contract For Construction;
 - (iv) check and review shop drawings and materials delivered to the Site, regularly review the Work to determine its compliance with the Construction Documents and this Contract For Construction, periodically confer with the appropriate Owner's consultant(s) to assure acceptable levels of quality; and
 - (v) prepare and maintain Project records, process documents, and staff the Site field office.
- 3.2.4 The Construction Manager shall promptly reject any Work which does not conform to the Construction Documents or which does not comply with any applicable law, statute, building code, rule or regulation of any public authority or agency of which it is aware. The Construction Manager shall immediately notify the Professional(s) and the Owner in writing when it has rejected any Work.
- 3.2.5 The Construction Manager shall comply with and cause its subcontractors and suppliers to comply with the Project Construction Schedule and applicable sub-schedules. The Construction Manager shall obtain and review schedules from subcontractors and suppliers, coordinate sub-schedules with the Construction Schedule, and enforce compliance with the all applicable schedules to insure timely completion of the Work. If at any time a Project is delayed, the Construction Manager shall immediately notify the Owner of the probable cause(s) and possible alternatives, and make recommendations to minimize expense to the Owner.
- 3.2.6 The Professional will visit the Project Site at intervals appropriate to the stage of construction and with sufficient frequency to familiarize itself with the progress and quality of the Work and to inspect the Work. The Construction Manager shall request that the Professional visit the Site at additional times as the Construction Manager deems necessary to attend meetings, inspect the Work, and render interpretations regarding the Work necessary for the proper execution of the Work. The Professional's interpretations and decisions shall be final regarding the Construction Documents and the Work.

3.3 Construction Manager's On-Site Facilities.

3.3.1 Commencing at the Date of Commencement and terminating on the Date Of Final Completion, the Construction Manager shall provide a Site field office and toilet facilities at the Project Site.

- .1 The field office facilities shall be large enough to accommodate required meetings and shall include office furnishings and equipment such as desks, telephones, computers, copiers and other similar office equipment.
- .2 The Construction Manager shall maintain in the Site field office, on a current basis, all necessary Construction Documents, schedules, shop drawings, product data, samples, purchase orders, maintenance manuals and instructions, daily logs, correspondence, memoranda, and all other Project-related documents.
- .3 The Construction Manager shall provide temporary toilets at the Site for all workers for the duration of the construction period.

3.4 **Additional Or Modified Required Services.** Additional or modified required services, if any, included in Construction Service are listed in Appendix 1 and incorporated herein by reference.

**ARTICLE 4
EXTRA SERVICES**

4.1 **Initiation Of Extra Services.** The Construction Manager shall provide such Extra Services as are initiated and authorized in writing by the Owner prior to performance. The services described in this Article 4 are not included in Required Services unless identified as an "Additional Required Service or Modified Required Service".

4.2 **Definition Of Extra Services.** Extra services include, but are not limited to:

- (i) services performed after the Date Of Final Completion, except when required as Basic Services.
- (ii) services for preparation for and attendance at deposition, discovery or court or other dispute resolution proceedings on behalf of the Owner, except when such proceedings involve issues of fault, neglect or alleged liability of the Construction Manager, or its agents, employees, or consultants.
- (iii) other services not included in Required Services mutually agreed to by the Owner and the Construction Manager in writing.

4.3 **Payment For Extra Services.** Payment of the Construction Manager for Extra Services shall be in accordance with applicable provisions of Chapter 1.

**APPENDIX 1
ADDITIONAL OR MODIFIED REQUIRED SERVICES**

GENERAL PROJECT SERVICES [¶ 1.4]

[Insert and identify with specificity all Additional Required Services, Modified Required Services, or state "None"]

PRE-CONSTRUCTION SERVICES [¶ 2.6]

[Insert and identify with specificity all Additional Required Services, Modified Required Services, or state "None"]

CONSTRUCTION SERVICES [¶ 3.4]

[Insert and identify with specificity all Additional Required Services, Modified Required Services, or state "None"]

CONTRACT FOR CONSTRUCTION
CHAPTER 3
GENERAL TERMS AND CONDITIONS

ARTICLE 1
CONTRACT DOCUMENTS

- 1.1 **Additional Sets Of Documents.** Any additional copies of the Construction Documents required by the Builder for execution of the Work shall be made by the Builder at its cost and expense from the reproducible set(s) furnished by the Owner.
- 1.2 **Return Of Documents To Owner.** The Builder shall return to the Owner the reproducible set(s), and all copies, of the Construction Documents upon Final Completion of the Work or termination of this Contract For Construction.
- 1.3 **Electronic Media.** Unless otherwise specified in this Contract For Construction, the Builder may request that the Construction Documents required by the Builder for the Work be furnished to it on electronic media. To the extent that such documents are available on electronic media, the Builder will be furnished one set of the requested information on electronic media. Any additional electronic copies of Construction Documents required by the Builder for execution of the Work shall be made by the Builder at the Builder's cost and expense. The Builder shall return one copy of electronic Construction Documents to the Owner upon final acceptance of the Work or termination of this Contract For Construction, whichever occurs first, and shall destroy all remaining electronic copies of the documents within its possession.
- 1.4 **Minimum Requirements.** In every case, requirements established by the Construction Documents shall be considered as the minimum which will be accepted.
- 1.5 **Owner Disclaimer Of Warranty.** The Owner has requested that its Professional(s) prepare documents for the Project, including the plans and specifications for the Project, which are to be complete, accurate, coordinated, and adequate for bidding, negotiating and constructing the Work. However, the Owner makes no representation or warranty of any nature whatsoever to the Builder concerning such documents. The Builder hereby acknowledges and represents that it has not relied, and does not and will not rely, upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made.
- 1.6 **Conflicts In Documents.** In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this Contract For Construction, the following shall control:
- 1.6.1 As between figures given on plans and scaled measurements, the figures shall govern;

- 1.6.2 As between large-scale plans and small-scale plans, the large-scale plans shall govern;
- 1.6.3 As between plans and specifications, the requirements of the specifications shall govern;
- 1.6.4 As between this document and the plans, specifications, general conditions or general requirements, this document shall govern.
- 1.7 **Shop Drawings And Submittals.** Shop drawings and other submittals from the Builder or its subcontractors and suppliers do not constitute a part of this Contract For Construction.
- 1.8 **Contract Changes.** The Builder understands and agrees that this Contract For Construction cannot be changed except as provided herein. No act, omission or course of dealing by the parties shall alter the requirement that modifications of this Contract For Construction can be accomplished only by written documents signed by the parties.

ARTICLE 2

BUILDER'S REVIEWS AND EVALUATIONS

- 2.1 **Sufficiency Of Construction Documents And Drawings.** The Builder acknowledges its continuing duty to review and evaluate the Construction Documents during the performance of its services and shall immediately notify the Owner and the Professional(s) about any (i) problems, conflicts, defects, deficiencies, inconsistencies or omissions it discovers in or between the Construction Documents; and (ii) variances it discovers between the Construction Documents and applicable laws, statutes, building codes, rules and regulations.
- 2.1.1 If the Builder performs any Work which it knows or should have known involves (i) a recognized problem, conflict, defect, deficiency, inconsistency or omission in the Construction Documents; or (ii) a variance between the Construction Documents and requirements of applicable laws, statutes, building codes, rules and regulations, without notifying the Professional(s) and prior to receiving written authorization from the appropriate Professional(s) to proceed, the Builder shall be responsible for the consequences of such performance.
- 2.1.2 Drawings are generally drawn to scale; however, the figured dimensions or notes

thereon shall govern. Before ordering any materials or doing any Work, the Builder and subcontractors shall verify all measurements at the Site and shall be responsible for the correctness of same. Discrepancies shall be reported in writing to the Professional prior to proceeding with the Work. No extra charge or compensation will be entertained due to differences between actual measurements and dimensions indicated on drawings, if such differences do not result in a change in the scope of Work or if the Professional failed to receive written notice before the Work was performed.

2.2 Sufficiency Of Site. Prior to signing this Contract For Construction, the Builder has

- (i) visited the Site and become familiar with local conditions under which the Project is to be constructed and operated; and
- (ii) reviewed and familiarized itself with the Site survey and any existing structures on the Site, and gathered all other information necessary for a full understanding of the Work.

In addition, if the Work involves modifications to or remodeling of an existing structure(s) or other man-made feature(s) on the Site, the Builder has also

- (iii) reviewed all available as-built and record drawings, plans and specifications; and
- (iv) thoroughly inspected the structure(s) and man-made feature(s) to be modified or remodeled prior to submission of bid, if any, but in all events prior to signing this Contract For Construction.

Claims resulting from the Builder's failure to familiarize itself with the Site or pertinent documents shall be deemed waived.

ARTICLE 3
BUILDER'S DUTIES, OBLIGATIONS
AND RESPONSIBILITIES

- 3.1 **Performance Of Work.** The Builder shall perform and complete its obligations under this Contract For Construction using its best skill and attention, and covenants with the Owner to furnish management, supervision, coordination, labor and services (i) which expeditiously, economically and properly completes the Work in the manner most consistent with the Owner's interests and objectives; (ii) which comply with the Construction Documents and this Contract For Construction; and (iii) in accordance with the highest standards currently practiced by persons and entities performing or providing management, supervision, coordination, labor and services on projects similar in size, complexity and cost to the Project.
- 3.1.1 The Builder shall not be required to provide professional services which constitute the practice of architecture or engineering.
- 3.1.2. All services rendered by the Builder for the Project shall be performed by or under the immediate supervision of persons possessing expertise in the discipline of the service being rendered.
- 3.1.3 The Builder shall, in the course of providing the Work, cooperate and communicate with the Owner and all other persons or entities as required for satisfactory completion of the Project.
- 3.1.4 The Builder understands and acknowledges that the Work referred to in this Contract For Construction may be only part of the Project and that the Project may include the construction of other structures or other construction activities on the same Site. The Builder shall conduct all its activities so as not to interfere with the construction of, or operations within or from, other structures on the Site.
- 3.1.5 The Builder shall not damage, endanger, compromise or destroy any part of the Project or the Site, including by way of example and not limitation, work being performed by others on the Site, monuments, stakes, benchmarks and other survey points, utility services, and existing features or structures on the Site. Should the Builder damage, compromise or destroy any part of the Project or the Site, the Builder shall be fully and exclusively responsible for and bear all costs associated therewith.

3.2 **Compliance With Governmental Requirements.** The Builder shall:

- (i) comply with all applicable laws, statutes, building codes, rules, regulations and lawful orders of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project;
- (ii) prepare and file documents required to obtain, and shall obtain, all necessary approvals and permits, including building permit(s), of all governmental authorities having jurisdiction over the Work; and
- (iii) give all notices required of it by governmental authorities relating to the Project.

3.3 **Safety.** Safety shall be a prime concern of the Builder at all times. The Builder shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures for coordinating and constructing the Work, including Site safety and safety precautions and programs.

3.4 **Concurrent Records.** The Builder shall, concurrently with performance, maintain detailed records of activities on the Site.

3.5 **As-Built Drawings.** The Builder shall maintain at the Site one copy of all drawings, specifications, addenda, approved shop drawings, change orders, submittals, and other modifications in good order and accurately marked depicting all changes as they occur during construction. The as-built drawings shall be available at all times to the Owner, the Professional(s), the Owner's consultants, and quality control and testing agency personnel. The drawings shall be neatly and clearly marked in color during construction to record all variations made during construction, and the Builder shall include such supplementary notes and details necessary to clearly and accurately represent as-built construction.

3.6 **Bribes And Kick-Backs.** The Builder shall not by any means:

- (i) induce any person or entity employed in the construction of the Project to give up any part of the compensation to which that person or entity is entitled;

- (ii) confer on any governmental, public or quasi-public official having any authority or influence over the Project, any payment, loan, subscription, advance, deposit of money, services or anything of value, present or promised;
- (iii) offer nor accept any bribes or kick-backs in connection with the Project from or to any individual or entity, including any of its trade contractors, subcontractors, consultants, suppliers or manufacturers of Project goods and materials; or
- (iv) without the express written permission of the Owner, call for or by exclusion require or recommend the use of any subcontractor, consultant, product, material, equipment, system, process or procedure in which the Builder has a direct or indirect proprietary or other pecuniary interest.

3.7 **Quality Control And Testing.** The Builder shall develop and implement a quality management program to insure quality construction. Unless otherwise specified in this Contract For Construction, the Owner shall select the quality control and testing agencies and pay for the cost of specified measures and tests required by the Construction Documents. The Builder shall coordinate all tests and inspections required by the Construction Documents, and the Builder shall arrange for tests and inspections to be conducted as necessary to avoid any interference with the progress of Work. No claims for extension of time or extra costs will be allowed on account of any testing, retesting, inspection, re-inspection, or rejection of Work when defective or deficient Work is found.

3.8 **Incident Reporting.** The Builder shall immediately notify the Owner and Professional(s), both orally and in writing, of the nature and details of all incidents which may adversely affect the quality or progress of the Work including, but not limited to, union jurisdictional disputes, accidents, delays, damages to Work and other significant occurrences.

3.9 **Hazardous Substances.** The Builder shall immediately notify the Owner and the Professional(s), both orally and in writing, of the presence and location of any physical evidence of, or information regarding, environmental contamination on the Site (including but not limited to Hazardous Substances and petroleum releases) of which it becomes, or reasonably should have become, aware. If the Builder encounters environmental contamination (including but not limited to Hazardous Substances and petroleum releases), the Builder shall (i) immediately stop performance of Work or that portion of the Work affected by or affecting such contamination; (ii) secure the contaminated area against intrusion; (iii) not disturb or remove the contamination; (iv) not proceed, or allow any subcontractor or supplier to proceed, with any Work or other activities in the area

affected by such contamination until directed to do so by the Owner; and (v) take any other steps necessary to protect life and health.

- 3.10 **Owner's Use Of And Access To The Site.** The Builder shall perform the Work so as not to interrupt any operations of the Owner on the Site.

3.10.1 The Builder understands and acknowledges that the Owner may need access to or use of certain areas of the Site or Work prior to the Builder's achievement of Substantial Completion, and that such occupancy, access or use shall not constitute the Owner's acceptance of any Work.

3.10.2 The Builder shall not enter any Owner-occupied area of the Site or Project unless first approved and scheduled by the Owner. The Builder understands and acknowledges that the Owner may incur damages if the Owner's operations on the Site are interrupted or impaired as a result of the Work.

3.10.3 The Builder shall afford the Owner's own forces, and other consultants, trade contractors, subcontractors and suppliers, access to the Site for performance of their activities, and shall connect and coordinate its construction and operations with theirs as required by the Construction Documents.

- 3.11 **Commissioning.** The Builder shall, through the Owner's Representative, schedule and coordinate all equipment and systems start-ups and Project commissioning within its scope of the Work.

3.11.1 The Builder shall provide the Owner with operation and maintenance manuals and other operational documentation not less than twenty-eight calendar days prior to the required date of Substantial Completion to allow adequate time for training prior to commissioning and the Owner's occupancy of the Project.

3.11.2 The Builder shall meet with the Owner's personnel not less than twenty-eight (28) calendar days prior to the required date of Substantial Completion to familiarize and train them with respect to maintenance and use of the Project. The appropriate Professional(s) will attend and assist with such familiarization and training.

ARTICLE 4
BUILDER'S PERSONNEL, SUBCONTRACTORS, SUPPLIERS
AND SITE FACILITIES

- 4.1 Project Staffing. The Builder shall staff the Project with qualified and designated individuals and entities responsible for its obligations and performance.**
- 4.1.1 The Builder shall name a representative (the "Builder's Representative") to serve as its primary communication contact with the Owner and the Professional(s).
- 4.1.2 The Builder shall employ persons skilled in the tasks assigned to them and shall contract with subcontractors and suppliers skilled in the tasks assigned to them and capable of working harmoniously with all trades, crafts and other individuals on the Project. The Builder shall use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance.
- 4.1.3 The Builder shall immediately remove from the Site, for the duration of the Project, any person making an inappropriate religious, racial, sexual or ethnic comment, statement or gesture toward any other individual.
- 4.1.4 The Builder shall immediately remove from the Site, for the duration of the Project, any person who is incompetent, careless, or not working in harmony.
- 4.1.5 The Builder shall be responsible to the Owner for the acts and omissions of its agents and employees, consultants, subcontractors and suppliers.

- 4.2 **Subcontractor / Supplier Contracts.** The Builder shall enter into written contracts with its subcontractors and suppliers, and those written contracts shall be consistent with this Contract For Construction. It is the intent of the Owner and the Builder that the obligations of the Builder's subcontractors and suppliers inure to the benefit of the Owner and the Builder, and that the Owner be a third-party beneficiary of the Builder's agreements with its subcontractors and suppliers.
- 4.2.1 The Builder shall make available to each subcontractor and supplier, prior to the execution of written contracts with any of them, a copy of the pertinent portions of this Contract For Construction, including those portions of the Construction Documents to which the subcontractor or supplier will be bound, and shall require that each subcontractor and supplier shall similarly make copies of applicable parts of such documents available to its respective subcontractors and suppliers.
- 4.2.2 The Builder shall include in its written contracts with its subcontractors and suppliers a provision which contains the acknowledgment and agreement of the subcontractor or supplier that it has received and reviewed the applicable terms, conditions and requirements of this Contract For Construction that are included by reference in its written contract with the Builder, and that it will abide by those terms, conditions and requirements.
- 4.2.3 The Builder's written contracts with its subcontractors and suppliers shall preserve and protect the rights of the Owner and include the acknowledgment and agreement of each subcontractor or supplier that the Owner is a third-party beneficiary of the contract. The Builder's agreements with its subcontractors and suppliers shall require that in the event of default under, or termination of, this Contract For Construction, and upon request of the Owner, the Builder's subcontractors and suppliers will perform services for the Owner.

- 4.3 **Resolution Of Trade Disputes.** The Builder shall promptly resolve claims, complaints, labor disputes and disputes over assignment of work tasks by and among its subcontractors and suppliers.

ARTICLE 5 GOODS, PRODUCTS AND MATERIALS

- 5.1 **Quality Of Materials.** The Builder shall furnish goods, products, materials, equipment and systems which:
- (i) comply with this Contract For Construction;
 - (ii) conform to applicable specifications, descriptions, instructions, drawings, data and samples;
 - (iii) are new (unless otherwise specified or permitted) and without apparent damage;
 - (iv) are of quality, strength, durability, capacity or appearance equal to or higher than that required by the Construction Documents;
 - (v) are merchantable;
 - (vi) are free from defects; and
 - (vii) are beyond and in addition to those required by manufacturers' or suppliers' specifications where such additional items are required by the Construction Documents.
- 5.2 **Installation And Use Of Materials.** All goods, products, materials, equipment and systems named or described in the Construction Documents, and all others furnished as equal thereto shall, unless specifically stated otherwise, be furnished, used, installed, employed and protected in strict compliance with the specifications, recommendations and instructions of the manufacturer or supplier, unless such specifications, recommendations or instructions deviate from accepted construction practices, or the Construction Documents, in which case the Builder shall so inform the Owner and the appropriate Professional and shall proceed as directed by that Professional, unless otherwise directed by the Owner. The Builder shall coordinate and interrelate all trade contracts, and subcontracts to ensure compatibility of goods, products, materials, equipment and systems, and validity of all warranties and guarantees, required by the Construction Documents for the Work.
- 5.3 **Unsuitable Materials.** The Builder shall inform the Owner of goods, products, materials, equipment or systems which the Builder knows or should have known are unsuitable or unavailable at the time of bid submission, and claims relating to or arising out of claims that goods, products, materials, equipment or systems are unsuitable or unavailable shall not be entertained by the Owner unless the Builder, subcontractor, or supplier notified the Owner in writing at the time of bid submission, along with proposed alternatives. Approval by the Owner and a Professional of substitute goods, products, materials, equipment or systems does not mean or imply final acceptance by the Owner

and Professional if such items should be defective or not as previously represented. Should the Builder furnish any approved goods, products, materials, equipment or systems different from or in addition to those required by the Construction Documents which require supplemental materials or installation procedures different from or in addition to those required for specified items, the Builder shall provide such at no increased cost to the Owner.

- 5.4 **Security For The Project.** The Builder shall provide security for the Project, including but not limited to security for its Work in progress and for the goods, products, materials, equipment, systems, construction machinery, tools, devices and other items required, used or to be used for its scope of the Work.

ARTICLE 6 DOCUMENTS AND INFORMATION

- 6.1 **Information From Owner.** The Owner shall provide the Builder with information reasonably necessary to assist the Builder in performing its services including, if applicable:

- (i) the Site legal description and any required survey;
- (ii) all written and tangible material in its possession concerning conditions below
ground at the Site;
- (iii) if the Project involves an existing structure, all available as-built drawings, record drawings, plans, specifications and structure system information with respect to such structure; and
- (iv) the Owner's pertinent Project dates and key milestone dates.

- 6.2 **Resolution Of Questions.** The Builder shall resolve all questions concerning the Construction Documents with the Professional who has prepared the documents.

- 6.3 **Processing Of Documents.** When requested to do so by the Owner, the Builder shall process documents, and provide other reasonably required drawings, services and certifications, necessary to enable the Owner to (i) obtain financing or insurance for the Project; (ii) obtain approvals, permits and Certificates of Occupancy for the Project not otherwise required to be obtained by Builder; and (iii) represent that the Work complies with requirements of governmental agencies having jurisdiction over the Project.

- 6.4 **Sufficiency Of Owner Information.** The furnishing of information by the Owner to the Builder shall not relieve the Builder of responsibilities contained elsewhere in this

Contract For Construction to evaluate information and documents provided by the Owner and the Builder shall timely notify the Owner in writing of any additional information needed or services required from the Owner in order for the Builder to perform the Work.

ARTICLE 7 SUBMITTALS

- 7.1 **Submittal Schedule.** The Builder shall timely prepare and transmit to the designated Professional a schedule for provision of all anticipated submittals. The schedule shall (i) include submittals required by the specifications; (ii) be in a format acceptable to the Professional; and (iii) set forth specific dates for submission of the listed submittals. The Builder shall review and approve all submittals prior to submission to a Professional.
- 7.2 **Processing Of Submittals.** The Builder shall in timely fashion review, approve if appropriate and forward submittals to the Professional(s) for review and approval along with such detail and information as the Professional requires. No part of the Work dealt with by a submittal shall be fabricated or performed until such approval has been given.
- 7.2.1 *A Professional is responsible to the Owner, but not to the Builder, to verify that the submittals conform to the design concept and functional requirements of the plans and specifications, that the detailed design portrayed in shop drawings and proposed equipment and materials shown in submittals are of the quality specified and will function properly, and that the submittals comply with the Contract For Construction.***

7.2.2 All Work shall be performed in accordance with approved submittals. Approval of submittals by a Professional shall not relieve the Builder from complying with this Contract For Construction, including all plans and specifications, except as changed by Change Order.

ARTICLE 8 BUILDER'S INSPECTION AND CORRECTION OF DEFECTIVE OR INCOMPLETE WORK

8.1 **Rejection And Correction Of Work In Progress.** During the course of Project, the Builder shall inspect and promptly reject any Work (i) which does not conform to the Construction Documents; or (ii) which does not comply with any applicable law, statute, building code, rule or regulation of any governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.

8.1.1 The Builder shall promptly correct or require the correction of all rejected Work, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Builder shall bear all costs of correcting such Work, including additional testing and inspections and compensation for all services and expenses necessitated by such correction.

8.1.2 The Builder shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, of the Owner or other trade contractors or subcontractors caused by the Builder 's correction or removal of rejected Work.

8.2 **Covered Or Concealed Work.** If a portion of the Work has been covered, the Builder shall, if notified to do so by the Owner or a Professional, uncover the designated portion for observation and then replace it.

8.2.1 If the designated portion of the Work was covered contrary to the request of the Owner or the Professional, or to requirements specifically expressed in the Construction Documents, the Builder shall receive no additional compensation for the costs of uncovering and replacement or modification of the Construction

Schedule.

8.2.2 If the designated portion of the Work was covered prior to a specific request by the Owner or the Professional that it remain uncovered, the Builder shall receive additional compensation for the costs of uncovering and replacement or modification of the Construction Schedule(s) only if the designated portion of the Work was in conformance with the Construction Documents.

ARTICLE 9 CHANGE ORDERS AND CHANGES TO THE WORK

9.1 **Change Order Requests.** Any party to the construction process may request changes to the Work, compensation or applicable schedules.

9.1.1 With respect to such requests for changes by the Builder, the Builder shall prepare and submit change order requests to the designated Professional.

9.1.2 With respect to requests for changes by parties other than the Builder, the Builder shall promptly review and respond to change order requests submitted by a Professional.

9.1.3 When requested to do so, the Builder shall prepare and submit to a Professional drawings, specifications or other data in support of a change order request.

9.1.4 Each change order shall include time and monetary impacts of the change, whether the change order is considered alone or with all other changes during the course of the Project.

9.2 **Owner-Directed Changes.** The Owner may unilaterally direct the Builder to implement changes in the Work so long as the Work the Owner is requiring is not outside of the general scope of this Contract For Construction, and the Builder, upon written direction from the Owner, shall proceed with such change.

9.3 **Professional-Directed Changes.** A Professional, without the Owner's prior approval, may authorize or direct the Builder to make minor changes in the Work which are consistent with the intent of the Construction Documents and which do not involve a change in Project cost, time for construction, scope, or approved design elements, and the Builder shall promptly carry out such changes. Any such minor changes shall be

implemented by written field order and executed by the Builder.

- 9.4 **Administration Of Changes.** A Professional will administer and manage all change order requests and change orders and will prepare required drawings, specifications and other supporting data as necessary in connection with minor changes, change order requests and change orders.
- 9.5 **Compensation For Changes.** With respect to all change order requests involving credit to the Owner or additional compensation to the Builder, the Builder shall (i) obtain from subcontractors and suppliers the best possible price quotations; (ii) review such quotations to ascertain whether they are reasonable; (iii) prepare an itemized accounting together with appropriate supporting data, including reasonable expenditures by, and savings to, those performing the Work involved in the proposed change; and (iv) provide a reasonable price quotation to the designated Professional.
- 9.5.1 If price quotations for change order requests are determined by the Professional to be unreasonable, the Builder shall, in writing, justify said quotations or provide additional back-up materials. If after review of the additional information the Professional determines the quotation is unreasonable, the Owner may require the subject Work be performed on a time and material basis.
- 9.5.2 The Builder and its subcontractors and suppliers shall be allowed no additional compensation for any costs, fees or expenses incurred in performing services already required by this Contract For Construction, and shall not be entitled to additional reimbursement for home-office, other non-job-site or indirect overhead expenses, or tools necessary for construction.

- 9.5.3 It is the responsibility of the Builder to review and approve all pricing of additional work required of its subcontractors and suppliers.
- 9.6 **Performance Of Changes.** Upon receipt of a field order or change order, changes in the Work shall be promptly performed. All changes in the Work shall be performed under applicable conditions of the Construction Documents.
- 9.7 **Disputes Regarding Changes.**
- 9.7.1 Regardless if there is a dispute (i) that a change has occurred; (ii) whether a change in the Work will result in adjustment of compensation or applicable schedules; or (iii) as to the amount of any adjustment of compensation or applicable schedules, the change shall be carried out if the Owner so directs. No claim shall be prejudiced by performance of the Work so long as the Owner is notified of the claim in writing prior to performance of the Work which is the subject of the dispute and the party disputing the decision of the Owner recites the reasons for its dispute in the written notice. Failure to notify the Owner in writing shall constitute a waiver of any claim resulting from the change.
- 9.7.2 In the event a change order request is approved by the Owner in the absence of an agreement as to cost, time, or both, the appropriate Professional will (i) receive and maintain all documentation pertaining thereto; (ii) examine such documentation on the Owner's behalf; (iii) take such other action as may be reasonably necessary or as the Owner may request; and (iv) make a written recommendation to the Owner concerning any appropriate adjustment in the Construction Price or time.
- 9.8 **Necessity For Signed Writing.** No act, omission or course of dealing shall alter the requirement that change orders shall be in writing and signed by the Owner, and that change orders are the exclusive method for effecting any adjustment to compensation or applicable schedules. The Builder understands and agrees, on behalf of itself and its subcontractors and suppliers, that neither compensation nor applicable schedules can be changed by implication, oral agreement, or unwritten change order.

ARTICLE 10 FINANCIAL CLAIMS AND LIENS

- 10.1 **Notification Regarding Liens.** The Builder shall immediately notify the Owner and Professional(s), both orally and in writing, of the nature and details of any mechanics' liens, construction liens, builder's trust fund claims, or claims of any type made by

anyone against the Owner, the Professional(s), the Builder or any subcontractor or supplier of any of them or against the Project whether or not such claims arise from the Work.

- 10.2 **Discharge Of Liens.** The Builder shall take all action necessary to obtain the prompt discharge of any liens or claims filed against the Project. If any lien or claim filed against the Project is not discharged and released by the claimant, the Builder shall, within a reasonable period of time, but in no event more than fourteen calendar days after request and at its own cost, promptly obtain discharge and release of, or indemnity for, such lien or claim by providing or filing, as appropriate, the requisite bond. If the Builder fails to have any such lien or claim discharged and released, or fails to provide or file the requisite bond, the Owner shall have the right to pay all sums necessary to obtain such a discharge and release, and the Builder shall bear all expenses incurred by the Owner in so doing.

ARTICLE 11 OWNER'S CONSULTANT(S), PROFESSIONAL(S) AND CONSTRUCTION ADMINISTRATION

- 11.1 **Owner's Designated Professional Representative.** Unless otherwise directed by the Owner, one designated Professional shall act as the Owner's representative from the effective date of this Contract For Construction until one year from the date of achievement of Substantial Completion.
- 11.1.1 The Professional so designated will be the Owner's design representative during performance of the Work and will consult with and advise the Owner on all design and technical matters.
- 11.1.2 The designated Professional will act as initial interpreter of the requirements of this Contract For Construction and as the Owner's advisor on claims.
- 11.2 **Professional Site Visits.** The Professional(s) will visit the Site with sufficient frequency for familiarization with the progress and quality of the Work and to inspect the Work to determine compliance of the Work with (i) this Contract For Construction, including approved shop drawings and other submittals; (ii) the Construction Schedule; and (iii) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.
- 11.3 **Professional Rejection Of Work.** The Professional(s) may disapprove or reject Work which does not comply with (i) this Contract For Construction including approved shop drawings and other submittals; or (ii) applicable laws, statutes, building codes, rules or regulations of any governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.
- 11.4 **Professional Evaluations.**

- 11.4.1 The Professional(s) will review and evaluate the results of all inspections, tests and written reports required by this Contract For Construction and by any governmental entity having or asserting jurisdiction over the Project. The Professional(s) will take appropriate action on test results, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the Professional(s). The Professional(s) will promptly reject Work which does not conform to and comply with testing requirements.
- 11.4.2 The Professional(s) may require inspection or testing of any Work in addition to that required by this Contract For Construction or governmental entities having or asserting jurisdiction over the Project when such additional inspections and testing is necessary or advisable, whether or not such Work is then fabricated, installed or completed. The Professional(s) will take appropriate action on all such special testing and inspection reports, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the Professional(s).
- 11.5 **Professional Submittal Activities.** The Professional(s) will review and approve, reject or take other appropriate action on submittals such as shop drawings, product data, samples and proposed equal materials or equipment and requested substitutions within not more than fourteen calendar days, and will not approve any submittals unless such submittals conform with (i) the Project design concept; (ii) this Contract For Construction; and (iii) the Owner's budgeted Total Project Construction Cost. A Professional's review of submittals shall not constitute final acceptance of materials or equipment furnished or installed if such materials or equipment should be defective or not as represented by approved submittals or as otherwise required by the Construction Documents. The Builder remains responsible for details and accuracy, for confirming and correlating all quantities and dimensions, for selecting fabrication processes, for techniques of assembly, and for performance of the Work.
- 11.6 **Professional Interpretations.** A Professional will, when requested to do so in writing by the Builder, promptly and so as to cause no unnecessary delay, render written or graphic interpretations and decisions necessary for the proper execution of the Work. A Professional's interpretations and decisions relating to artistic effect shall be final if not inconsistent with this Contract For Construction.
- 11.7 **Professional Change Order Activities.** The Professional(s) will consult with and advise the Owner concerning, and will administer and manage, all change order requests and change orders on behalf of the Owner.

- 11.8 **Professional Pay Application Activities.** The appropriate Professional will review applications for payment, including such accompanying data, information and schedules as the Professional requires, to determine the amounts due to the Builder and shall authorize payment by the Owner to the Builder in writing. After the Work is determined to be finally complete and the Professional determines that the Builder has completed the Work, the Professional will determine whether the Builder is entitled to final payment, and if so will so certify to the Owner in writing.
- 11.9 **Professional Relationship To Builder.** The duties, obligations and responsibilities of the Builder under this Contract For Construction shall not be changed, abridged, altered, discharged, released, or satisfied by any duty, obligation or responsibility of any Professional. The Builder shall not be a third-party beneficiary of any agreement by and between the Owner and any Professional. The duties of the Builder to the Owner shall be independent of, and shall not be diminished by, any duties or obligations of any Professional to the Owner.

ARTICLE 12
INSPECTION, CORRECTION OF WORK,
AND PROJECT CLOSE OUT

12.1 **Substantial Completion.** Substantial Completion of the Work shall be deemed to have occurred on the later of the dates that the Work passes a Substantial Completion inspection, and the required Substantial Completion documentation and items have been produced.

12.1.1 When the Builder believes that the Work is substantially complete, it shall notify the Owner and the appropriate Professional that its Work is ready for a Substantial Completion inspection.

12.1.2 At or prior to the Substantial Completion inspection, the Builder will prepare and furnish to the Professional a Declaration of Substantial Completion, which at a minimum must:

- (i) contain a blank for entry of the date of Substantial Completion, which date will fix the commencement date of warranties and guaranties and allocate between the Owner and the Builder responsibility for security, utilities, damage to the Work and insurance;
- (ii) include a list of items to be completed or corrected and state the time within which the listed items will be completed or corrected; and
- (iii) contain signature lines for the Owner, the Builder and the Professional.

12.1.3 Upon receipt of notification from the Builder the appropriate Professional will coordinate with the Owner and the Builder a date for inspection of the Work to determine whether the Work is substantially complete.

12.1.4 At inspection(s) to determine whether the Work is substantially complete, the Professional will:

- (i) inspect the Work;
- (ii) list additional items to be completed or corrected; and
- (iii) determine, in consultation with the Owner, whether Substantial Completion of the Work has occurred.

12.1.5 If the Work is determined not to be substantially complete, the Work shall be prosecuted until the Work is substantially complete and the inspection process shall be repeated at no additional cost to the Owner until the Work is determined to be substantially complete.

12.1.6 On or prior to the required date of Substantial Completion, the Builder shall deliver to the appropriate Professional keys, permits, the certificate of occupancy, and other necessary and customary documents and items pre-requisite for the Owner's occupancy and use of the Work for its intended purpose. The Professional will obtain and review Substantial Completion documentation and items, and will inform the Builder of any deficiencies.

12.1.7 When the Owner, the Builder and the appropriate Professional agree that the Work has passed the Substantial Completion inspection and the Builder has produced the required Substantial Completion documentation and items, they shall each sign the Declaration of Substantial Completion declaring the Work substantially complete and establishing the actual date of Substantial Completion. The Declaration of Substantial Completion shall also include a list of and timeline for the completion of Work needing completion and correction.

12.2 **Final Completion.** Final Completion of the Work shall be deemed to have occurred on the later of the dates that the Work passes a Final Completion inspection and that the Builder has produced all required Final Completion close-out documentation and items. Final Completion shall not be deemed to have occurred and no final payment shall be due the Builder or any of its subcontractors or suppliers until the Work has passed the Final Completion inspection and all required Final Completion close-out documentation and items have been produced to the Owner by the Builder.

12.2.1 When the Builder believes the Work is finally complete, the Builder shall notify the Owner and the appropriate Professional that the Work is ready for Final Completion inspection.

12.2.2 Upon receipt of such notification from the Builder, the Professional will coordinate with the Owner and the Builder a date for inspection of the Work to determine whether the Work is finally complete.

12.2.3 At the Final Completion inspection to determine whether the Work is finally complete, the Professional will:

- (i) inspect the Work;
- (ii) determine whether all items on the list included with the Declaration of Substantial Completion have been satisfactorily completed and corrected;
- (iii) determine whether the Work complies with (a) this Contract For Construction; (b) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project; and (c) applicable installation and workmanship standards;
- (iv) determine whether required inspections and approvals by the official(s) having or asserting jurisdiction over the Project have been satisfactorily completed; and
- (v) determine, in consultation with the Owner, whether the Work is finally complete.

12.2.4 If the Work is not finally complete, the Builder shall continue to prosecute the Work, and the inspection process shall be repeated at no additional cost to the Owner, until the Work is finally complete.

12.2.5 On or prior to the date of Final Completion, the Builder shall deliver to the appropriate Professional the following Final Completion close-out documentation and items:

- (i) all operating and instruction manuals not previously produced during commissioning and required maintenance stocks;
- (ii) two (2) sets of as-built drawings and markups;
- (iii) certification and affidavit that all insurance required of the Builder beyond final payment, if any, is in effect and will not be canceled or allowed to expire without notice to the Owner;
- (iv) written consent of the surety(ies), if any, to final payment;
- (v) full, final and unconditional waivers of mechanics or construction liens, releases of builder's trust fund or similar claims, and release of security interests or encumbrances on the Project property from each contractor, subcontractor, supplier or other person or entity who has, or might have a claim against the Owner or the Owner's property;
- (vi) full, final and unconditional certification and affidavit that all of the Builder's obligations to contractors, subcontractors, suppliers and other third parties for payment for labor, materials or equipment related to the Project have been paid or otherwise satisfied;
- (vii) all written warranties and guarantees relating to the labor, goods, products, materials, equipment and systems incorporated into the Work, endorsed, countersigned, and assigned as necessary;
- (viii) affidavits, releases, bonds, waivers, permits and other documents necessary for final close-out of Work;
- (ix) a list of any item(s) due but unable to be delivered and the reason for non-delivery; and
- (x) any other documents reasonably and customarily required or expressly required herein for full and final close-out of the Work.

12.2.6 The appropriate Professional will review and determine the sufficiency of all Final Completion close-out documentation and items required for Final Completion which are submitted by the Builder, and will immediately inform the Builder about any deficiencies and omissions.

ARTICLE 13 BUILDER'S WARRANTIES AND GUARANTEES

13.1 **One-Year Warranty.** In addition to the warranties and guarantees set forth elsewhere in this Contract For Construction, the Builder, upon request by the Owner or the Professional, shall promptly correct all failures or defects in the Work for a period of one

year after the actual date of Substantial Completion, or the date of acceptance by the Owner, whichever is later.

13.1.1 The Builder shall schedule, coordinate and participate in a walk-through inspection of the Work one month prior to the expiration of the one-year correction period, and shall notify the Owner, the appropriate Professional(s), and any necessary subcontractors and suppliers of the date of, and request their participation in, the walk-through inspection. The purpose of the walk-through inspection will be to determine if there are defects or failures which require correction.

13.1.2 Should the Builder fail to promptly correct any failure or defect, the Owner may take whatever actions it deems necessary to remedy the failure or defect and the Builder shall promptly reimburse the Owner for any expenses or damages it incurs as a result of the Builder 's failure to correct the failure or defect.

13.2 **Express Warranties And Guarantees – Builder.** In addition to the warranties and guarantees set forth elsewhere herein, the Builder expressly warrants and guarantees to the Owner:

- (i) that the Work complies with (a) the Construction Documents; and (b) all applicable laws, statutes, building codes, rules and regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.
- (ii) that all goods, products, materials, equipment and systems incorporated into the Work conform to applicable specifications, descriptions, instructions, drawings, data and samples and shall be and are (a) new (unless otherwise specified or permitted) and without apparent damage or defect; (b) of quality equal to or

higher than that required by the Construction Documents; and (c) merchantable;
and

- (iii) that all management, supervision, labor and services required for the Work shall comply with this Contract For Construction and shall be and are performed in a workmanlike manner.

- 13.3 **Express Warranties And Guarantees - Subcontractors And Suppliers.** The Builder shall require that all of its subcontractors and suppliers provide written warranties, guarantees and other undertakings to the Owner and the Builder in a form identical to the warranties, guarantees and other undertakings set forth in this Contract For Construction, including the warranties, guarantees and undertakings set forth in this Article, which warranties, guarantees and undertakings shall run to the benefit of the Owner as well as the Builder.
- 13.4 **Non-Exclusivity And Survival.** The warranties and guarantees set forth in this Article shall be in addition to all other warranties, express, implied or statutory, and shall survive the Owner's payment, acceptance, inspection of or failure to inspect the Work, and review of the Construction Documents.
- 13.5 **Non-Limitation.** Nothing contained in Paragraph 13.1, shall be construed to establish a period of limitation with respect to the Builder's obligations under this Contract For Construction. Paragraph 13.1 relates only to the Builder's specific obligations with respect to the Work, and has no relationship to the time within which the Builder's contractual obligations under this Contract For Construction may be enforced, nor to the time within which proceedings may be commenced to establish the Builder's liability with respect to any contractual obligations pursuant to Paragraph 13.1 or contained elsewhere herein.
- 13.6 **Commencement Of Obligations.** Unless otherwise specified, all of the Builder's warranty and guaranty obligations, including the time period(s) for all written warranties and guarantees of specifically designated equipment required by the Construction Documents, shall begin on the actual date of Substantial Completion or the date of acceptance by the Owner, whichever is later.

ARTICLE 14

OWNER'S DUTIES, OBLIGATIONS AND RESPONSIBILITIES

- 14.1 **Timely Compensation Of Builder.** The Owner shall timely compensate the Builder in accordance with this Contract For Construction.

14.2 **Payment For Testing.** Unless otherwise required to be provided by the Builder in its scope of services, Owner shall secure and pay for all Project testing.

14.3 **Owner Review Of Documents.** The Owner shall review documents prepared by the Builder in a timely manner and in accordance with schedule requirements. Review by the Owner shall be solely for the purpose of determining whether such documents are generally consistent with the Owner's intent. No review of such documents shall relieve the Builder of any of its responsibilities.

14.4 **Status Of Owner.** The Owner shall not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Builder, for any of the foregoing purposes, be deemed the agent of the Owner.

14.5 **Owner's Utilities.** The Owner shall provide water, gas and electrical energy only as they exist at the Site prior to the start of construction. The Builder shall be responsible to provide and pay for connections to, extensions from and means of using these utilities.

14.5.1 The Owner will pay utility company bills for water, gas and electrical energy which is required for the Project and which passes through the Owner's meters.

However, the Owner shall not pay for (i) water which is expended without proper regard for ecological and conservation considerations; (ii) electrical energy expended in electric heating devices; or (iii) utilities for Builder's field offices.

14.5.2 Acceptance by the Builder of the use of the Owner's water, gas and electrical energy constitutes a release from the Builder to the Owner of all claims and liability for any damages or losses which may be incurred by the Builder as a result of water, gas and electrical energy outages or voltage variations or surges.

14.6 **Statements Of Owner's Capacity.** The Owner, upon reasonable written request, shall furnish to the Builder in writing statements of

- (i) the record legal title to the Site on which the Project is located and the Owner's interest therein at the time of execution of this Contract For Construction; and
- (ii) the Owner's financial capacity to pay for the Project, subject to such reasonable confidentiality requirements that the Owner may impose.

ARTICLE 15 BUILDER'S COMPENSATION

15.1 **Unit Prices.** If any portion of the Construction Price is determined by the application of unit prices, the number of units contained in the Builder's Compensation Schedule is an estimate only, and the compensation to the Builder shall be determined by the actual number of units incorporated in, or required by, the Work.

15.2 **Schedule Of Values.** The Builder shall prepare and present to the Owner and the designated Professional the Builder's schedule of values, apportioning the different elements of the Work for purposes of periodic and final payment. The Builder's schedule of values shall be presented in the format, and with such detail and supporting information, requested by the Professional or Owner. The Builder shall not imbalance or artificially inflate any element of its schedule of values. Upon the Professional and Owner's acceptance, the schedule of values shall be used to process and pay the Builder's payment requests. The schedule of values shall not be changed without written change order authorized by the Owner.

15.3 **Invoicing Procedures.** In accordance with the procedures and requirements set forth in this Article, the Builder shall invoice the Owner and the Owner shall pay the Builder the Construction Price.

15.3.1 At least every thirty calendar days after commencement of performance, but no more frequently than once a month, the Builder shall submit invoices to the Professional requesting payment for labor and services rendered during the preceding thirty calendar days. Each invoice shall contain such detail and be backed up with whatever supporting information the Owner or a Professional

requests and shall at a minimum state:

- (i) the total Construction Price;
- (ii) the amount due for properly provided labor, materials and equipment properly incorporated into the Project; and with respect to amounts invoiced for materials or equipment necessary for the Project and properly stored at the Site (or elsewhere if offsite storage is approved in writing by the Owner), be accompanied by written proof that the Owner has title to such materials or equipment and that such material and equipment is fully insured against loss or damage;
- (iii) a breakdown of the various phases or parts of the Work as related to the Construction Price;
- (iv) the value of the various phases or parts of the Work actually performed;
- (v) previously invoiced amounts and credit payments made;
- (vi) the total amount due, less any agreed retainage;

and shall also have attached such lien waiver and other documentation verifying the Builder's payment to subcontractors and suppliers as the Owner or a Professional may request.

15.4 Payment Procedures.

15.4.1 The Professional will review the Builder's applications for payment, including such accompanying data, information and schedules as the Professional requires, to determine the amounts due to the Builder and, based upon such review, together with its inspections of the Work, shall authorize payment by the Owner to the Builder in writing. Such authorization will constitute the Professional's certification to the Owner that

- (i) the Work described in the Builder's invoice has progressed to the level indicated and has been performed in accordance with the Contract For Construction;
- (ii) all necessary and appropriate lien waivers have been submitted; and
- (iii) the amount requested is currently due and owing to the Builder.

15.4.2 In the case of unit price work, the Professional's recommendations for payment will constitute a final determination of quantities and classifications of such work.

15.4.3 Payments shall be deemed timely if postmarked at least two business days before the Payment Date defined in Chapter 1 or any other payment due date stated in this Article 15.

15.5 **Owner's Right To Refuse Payment.** A Professional's approval of the Builder's invoice shall not preclude the Owner from exercising any of its remedies under this Contract For Construction. In the event of a dispute, payment shall be made on or before the Payment Date for amounts not in dispute, subject to any setoffs claimed by the Owner. The Owner shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or all of the amount previously paid to the Builder due to:

- (i) the Builder's failure to perform the Work in compliance with the requirements of this Contract For Construction or any other agreement between the parties;
- (ii) the Builder's failure to correctly and accurately represent the Work performed in a payment request, or otherwise;
- (iii) the Builder's performance of the Work at a rate or in a manner that, in the Owner's opinion, is likely to result in the Project or any portion of the Project being inexcusably delayed;
- (iv) the Builder's failure to use funds previously paid the Builder by the Owner, to pay the Builder's Project-related obligations including, but not limited to, the Builder's subcontractors, materialmen, and suppliers;
- (v) claims made, or likely to be made, against the Owner or its property;
- (vi) loss caused by the Builder or the Builder's subcontractors, or suppliers; or
- (vii) the Builder's failure or refusal to perform any of its obligations to the Owner.

15.6 **Builder's Right To Refuse Performance For Non-Payment.** If within thirty calendar days from the Payment Date the Owner, without cause or basis hereunder, fails to pay the Builder any amounts then due and payable to the Builder, the Builder shall have the right, in addition to all other rights and remedies contained herein, to cease performance

of the Work until receipt of proper payment after first providing fourteen calendar days written notice to the Owner of its intent to cease work.

15.7 **Correction Of Past Payments.** All prior payments, whether based on estimates or otherwise, may be corrected and adjusted in any subsequent payment and shall be corrected and adjusted in the final payment. In the event that any invoice contains a defect or impropriety which would prevent payment by the Payment Date, the Owner shall notify the Builder in writing of such defect or impropriety. Any disputed amounts determined by the Owner to be payable to the Builder shall be due thirty calendar days from the date the dispute is resolved.

15.8 **Interest On Outstanding Amounts Due.** Interest shall accrue on amounts owed by the Owner to the Builder which remain unpaid thirty calendar days following the date on which payment is due. Said interest shall accrue at the discounted ninety-day U.S. Treasury bill rate as established by the Weekly Auction and as reported in *The Wall Street Journal* on the weekday following each such Weekly Auction.

15.8.1 No interest shall accrue when payment is delayed because of a dispute between the Owner and the Builder, or a dispute as to the accuracy or completeness of any request for payment received. This exception to the accrual of interest shall apply only to that portion of a delayed payment which is actually the subject of the dispute and shall apply only for the duration of such disagreement. Nor shall interest accrue on retainage which is withheld to assure performance of this Contract For Construction.

15.9 **Invoice Warranties And Guarantees.** The Builder expressly warrants and guarantees to the Owner that:

- (i) title to all goods, products, materials, equipment and systems covered by an invoice will pass to the Owner either by incorporation into the Work, or upon receipt of payment by the Builder, whichever occurs first;
- (ii) all goods, products, materials, equipment and systems covered by an invoice are free and clear of liens, claims, security interests or encumbrances; and

- (iii) no goods, products, materials, equipment or systems covered by an invoice have been acquired by the Builder, or its subcontractors or suppliers, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Builder, or its subcontractors or suppliers.

15.10 **Builder's Signature.** The signature of the Builder on any invoice constitutes the Builder's certification to the Owner that (i) the Builder's services listed in the invoice have progressed to the level indicated and have been performed as required by this Contract For Construction; (ii) the Builder has paid its subcontractors and suppliers their proportional share of all previous payments received from the Owner; and (iii) the amount requested is currently due and owing.

15.11 **Taxes.** The Builder shall incorporate into the Construction Price, and pay, all sales, consumer, use and similar taxes for goods, products, materials, equipment and systems incorporated into the Work which were legally required at the time of execution of this Contract For Construction, whether or not yet effective or merely scheduled to go into effect. The Builder shall secure, defend, protect, hold harmless, and indemnify the Owner from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants) relating to any taxes assessed or imposed upon, incurred by or asserted against the Owner by any taxing authority with respect to such taxes. The Builder shall cooperate with and assist the Owner in securing qualified refunds of any sales or use tax paid by the Owner or Builder on goods, products, materials, equipment or systems. Any refund secured shall be paid to the Owner.

15.12 **Compensation Of Builder's Subcontractors And Suppliers.** Upon receipt of payment from the Owner, the Builder shall pay each of its subcontractors and suppliers out of the amount received by the Builder on account of such subcontractor's or supplier's portion of the Work, the amount to which each entity is entitled, reflecting percentages actually retained from payments to the Builder on account of such entity's portion of the Work. The Owner shall have no obligation to pay, and shall not be responsible for payments to, the Builder's subcontractors or suppliers. However, the Owner reserves the right, but has no duty, to make payment jointly to the Builder and to any of its subcontractors or suppliers in the event that the Owner becomes aware that the Builder fails to pay or unreasonably withholds payment from one or more of those entities. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

15.13 **Final Payment.** Prior to being entitled to receive final payment, and as a condition precedent thereto, the Builder must achieve Final Completion. The Owner shall, subject

to its rights set forth above in this Article, make final payment of all sums due the Builder within fourteen calendar days of a Professional's execution of a final approval for payment.

ARTICLE 16 SCHEDULE REQUIREMENTS

16.1 Construction Schedule. The Construction Schedule shall include all pertinent dates and periods for timely completion of the Work.

16.1.1 Unless otherwise directed and approved by the Owner, the Builder shall prepare the Construction Schedule as a critical path schedule with separate divisions for each major portion of the Work or operations. The Construction Schedule shall include and properly coordinate dates for performance of all divisions of the Work, including completion of off-Site requirements and tasks, so that the Work can be completed in a timely and orderly fashion consistent with the required dates of Substantial Completion and Final Completion.

16.1.2 The Construction Schedule shall include (i) the required Commencement Date, the required dates of Substantial Completion and Final Completion; (ii) any guideline and milestone dates required by the Owner; (iii) any applicable subcontractor and supplier subschedules; (iv) a submittal schedule which allows sufficient time for review of documents and submittals; (v) the complete sequence of construction by activity, with dates for beginning and completion of each element of construction; and (vi) required decision dates.

16.1.3 By reviewing the Construction Schedule, the Owner and a Professional do not assume any of the Builder's responsibility (i) that the Construction Schedule be coordinated or complete; or (ii) for timely and orderly completion by the required dates of Substantial Completion, Final Completion and any milestone dates

required by the Owner.

16.1.4 The Builder shall review, on a weekly basis, the actual status of the Work against the Construction Schedule. The Builder shall discuss the status of the Work weekly with the designated Professional, so that proper overall management may be provided.

16.1.5 The Builder shall periodically and in all instances when the Builder anticipates that performance of the Work will be delayed or in fact has been delayed, but not less frequently than monthly, prepare a revised Construction Schedule and show actual progress of the Work through the revision date, projected completion of each remaining activity, activities modified since previous submittal, major changes in scope, and other identifiable changes. The updated Construction Schedule shall be accompanied by a narrative report which (i) states and explains any modifications of the critical path schedule, including any changes in logic; (ii) defines problem areas and lists areas of anticipated delays; (iii) explains the anticipated impact the problems and delays will have on the schedule and scheduled activities; (iv) reports corrective action taken or proposed; and (v) states how problems anticipated by projections shown on the schedule will be resolved to avoid delay in delivering the Work by the required dates of Substantial Completion and Final Completion, and other milestone dates required by the Owner, if any.

16.2 **Delay In Performance.** If at any time the Builder anticipates that performance of the Work will be delayed or in fact has been delayed, the Builder shall (i) immediately notify the designated Professional of the probable cause of and effect from the delay, and possible alternatives to minimize the delay; and (ii) take all corrective actions reasonably

necessary to deliver the Work by the required dates of Substantial Completion and Final Completion, and other milestone dates required by the Owner, if any.

- 16.3 **Modifications To Time For Performance.** The Builder shall determine and promptly notify the Owner and the Professional(s) in writing when it believes adjustments to the required dates of Substantial Completion or Final Completion, or other milestone dates required by the Owner, if any, are necessary, but no such adjustments shall be effective unless approved in writing by the Owner and Professional(s).
- 16.4 **Early Completion.** The Builder may attempt to achieve Substantial Completion before the required date of Substantial Completion. However, such planned early completion shall be for the Builder's sole convenience and shall not create any additional Builder rights or Owner obligations under this Contract For Construction, nor shall it change the required dates of Substantial Completion or Final Completion. The Owner shall not pay the Builder any additional compensation for achievement of Substantial Completion or Final Completion prior to the required dates nor will the Owner owe the Builder any compensation should the Owner cause the Builder not to achieve Substantial Completion earlier than the required date of Substantial Completion or Final Completion earlier than the required date of Final Completion.
- 16.5 **Modification Dates Of Substantial Completion Or Final Completion.** The Builder may propose modifications to the required dates of Substantial Completion or Final Completion. The Owner may, but is not required to, accept the Builder's proposal. Modification(s) of the required dates of Substantial Completion or Final Completion shall be accomplished only by duly authorized and accepted change order(s) stating the new date(s) with specificity and reciting that all references in this Contract For Construction to the required dates of Substantial Completion or Final Completion shall thereafter refer to the date(s) as modified, and all rights and obligations, including the Builder's liability for actual damages, delay damages and liquidated damages, shall be determined in relation to the date(s) as modified.
- 16.6 **Document Review.** The Builder shall provide documents to the Owner and Professional(s) for review in accordance with schedule requirements and with sufficient lead time to allow the Owner and Professional(s) reasonable time for review.

ARTICLE 17 LIQUIDATED DAMAGES

- 17.1 **Time Of The Essence.** The parties hereto mutually understand and agree that time is of the essence in the performance of this Contract For Construction and that the Owner will incur damages if the Work is not completed on time. The Builder shall at all times carry out its duties and responsibilities as expeditiously as possible and shall begin, perform and complete its services so that (i) the Work progresses in accordance with the Construction Schedule; (ii) the Work is substantially completed by the required date of

Substantial Completion; and (iii) the Work is finally complete by the date of Final Completion.

- 17.2 **Failure To Timely Achieve Completion.** The parties hereto mutually understand and agree that the Owner will sustain substantial monetary and other damages in the event of a failure or delay by the Builder in the completion of the Work. If the Builder inexcusably fails to achieve Substantial Completion by the required date of Substantial Completion as established and previously set forth in this Contract For Construction, the Builder shall pay to the Owner, as liquidated damages for delay and not as a penalty, the daily amount specified in Chapter 1 for each and every day after the required date of Substantial Completion until Substantial Completion. This liquidated damages provision shall apply and remain in full force and effect in the event that the Builder is terminated by Owner for default and shall apply until Substantial Completion has been achieved by any completing builder. If the Builder fails to achieve Final Completion by the required date of Final Completion as established and previously set forth in this Contract For Construction, the Builder shall pay to the Owner, as liquidated damages for delay and not as a penalty, fifteen (15%) percent of the daily amount stated for failure to timely achieve Substantial Completion, even if not actually imposed, for each calendar day of unexcused delay in achieving Final Completion.
- 17.3 **Compensable Delay.** If the Builder is delayed at any time in the progress or performance of the Work by (i) acts or omissions of the Owner or Professional(s); (ii) major changes ordered by the Owner in the scope of Work; or (iii) any other cause which the Owner determines may justify the compensation of the Builder for the delay, the Builder's compensation shall be equitably adjusted to cover the Builder's actual and direct increased costs attributable to such delay.
- 17.4 **Excusable Delay.** If the Builder is delayed at any time in the progress or performance of the Work by (i) acts or omissions of the Owner or Professional(s); (ii) major changes ordered by the Owner in the scope of Work; (iii) fire; (iv) unusual delays in transportation; (v) adverse unusual weather conditions not reasonably anticipated by the Builder; (vi) unavoidable casualties; (vii) causes beyond the Builder's control which the Owner agrees in writing are justifiable; or (viii) any other cause which the Owner determines may justify the delay, the Construction Schedule shall be extended for a period equal to the length of such delay, but only if (a) such delay is not in any way caused by default or collusion on the part of the Builder or by any cause which the Builder could reasonably control or circumvent; (b) the Builder would have otherwise been able to timely perform all of its obligations under this Contract For Construction but for such delay; and (c) immediately but not later than seven calendar days after the beginning of any such delay the Builder gives notice of its delay claim to the Owner.
- 17.5 **Owner's Right To Withhold Payment.** When it reasonably believes (i) that Substantial Completion will be inexcusably delayed; or (ii) that the Builder will fail to achieve Final Completion by the date of Final Completion, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Builder the daily amount specified for liquidated damages in this Article for each calendar day of the unexcused delay.
- 17.5.1 If and when the Builder overcomes the delay in timely achieving Substantial

Completion or Final Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Builder those funds withheld, but no longer applicable, as liquidated damages.

17.5.2 Delay caused by labor disputes, picketing, employee boycotts, or the like which directly or indirectly involves employees of the Builder or its subcontractors and suppliers is not the responsibility of the Owner and will result in time extensions only if agreed to in writing by the Owner at the time such events arise.

ARTICLE 18 CONCEALED AND UNFORESEEN CONDITIONS

18.1 **Notification Regarding Unusual Conditions.** If (i) the Builder encounters concealed and unforeseen conditions of an unusual nature which affect the performance of the Work; or (ii) the conditions vary from those indicated by the Construction Documents; and (iii) such conditions are not ordinarily found to exist or differ materially from those generally recognized as inherent in work of the character provided by the Builder, the Builder shall promptly, but in no event later than three calendar days after first observance of the conditions, notify the appropriate Professional(s) and the Owner before conditions are disturbed and give the Professional(s) or the Owner opportunity to observe the condition in its undisturbed state.

18.1.1 The conditions will be promptly investigated and, if they differ substantially and cause a material increase or decrease in the Builder's cost of, or time required for, performance of the Work, compensation or time for performance or both will be equitably adjusted.

18.1.2 All adjustments in compensation or extensions of time shall be by change order. Change order requests must be made within fourteen calendar days from the date of observation of the changed conditions.

18.1.3 *The Builder's failure to notify the Professional(s) and Owner as provided in this Article shall constitute a waiver of any claim arising out of or relating to such concealed or unknown condition.*

ARTICLE 19 BUILDER'S RECORDS

- 19.1 **Preparation Of Records.** The Builder shall, concurrently with performance of its services, prepare substantiating records regarding services rendered and goods furnished.
- 19.2 **Retention Of Records.** The Builder shall retain in its records copies of all (i) written communications; (ii) memoranda of verbal communications; (iii) accounting records (including original estimates and estimating work sheets, purchase orders and invoices); (iv) job site notes; (v) daily logs; (vi) reports; (vii) notices; (viii) all subcontract files (including proposals of successful and unsuccessful bidders); (ix) change order files (including documentation covering negotiated settlements); (x) written policies and procedures, (xi) records necessary to evaluate and verify direct and indirect costs (including by way of example overhead allocations, payroll records, time sheets, rental receipts, fixed asset records); and (xii) other documents such as plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, accounting records, documents reflecting the unit price of construction and other writings or things which document the Project, its design, its cost, and its construction.
- 19.2.1 The Builder shall maintain substantiating records for five years after the date of Final Completion or for any longer period of time as may be required by law or good construction practice. If the Builder receives notification of a dispute or the commencement of litigation regarding the Project within this five-year period, the Builder shall continue to maintain all Project records until final resolution of the dispute or litigation.
- 19.2.2 The Builder shall, upon seven days' request from the Owner, secure from its subcontractors and suppliers copies of (i) written communications; (ii) memoranda of verbal communications; (iii) accounting records (including original estimates and estimating work sheets, purchase orders and invoices); (iv) job site notes; (v) daily logs; (vi) reports; (vii) notices; (viii) all subcontract files (including proposals of successful and unsuccessful bidders); (ix) Change Order files (including documentation covering negotiated settlements); (x) written policies and procedures, (xi) records necessary to evaluate and verify direct and indirect costs (including overhead allocations), and (xii) other documents generated with respect to the Project.
- 19.3 **Access To Records.** Upon the request of the Owner, the Builder shall make its records available during normal business hours to the Owner, its authorized representative(s) or to any state, federal or other regulatory authority. Any such authority, the Owner and its authorized representative(s) shall be entitled to inspect, examine, review and copy the Builder's records at the copying party's reasonable expense, within adequate work space at the Builder's facilities. Failure by the Builder to supply substantiating records

from itself and its subcontractors and suppliers upon the request of the Owner shall be reason to exclude the related costs from amounts which might otherwise be payable by the Owner pursuant to this Contract For Construction.

ARTICLE 20

PROPRIETARY DOCUMENTS AND CONFIDENTIALITY

- 20.1 **Nature And Use Of Information.** All information, documents, and electronic media furnished by the Owner to the Builder (i) belong to the Owner; (ii) are proprietary and confidential; (iii) are furnished solely for use on the Owner's Project; (iv) shall be kept confidential by the Builder; and (v) shall not be used by the Builder on any other project or in connection with any other person or entity, unless disclosure or use thereof in connection with any matter other than services rendered to the Owner hereunder is specifically authorized in writing by the Owner in advance. The Owner hereby grants to the Builder a limited license to use and reproduce applicable portions of the Construction Documents necessary for execution of the Work. All copies made under this license shall bear the statutory copyright notice, if any, shown on the documents.
- 20.2 **Ownership Of Information.** All information, documents, and electronic media prepared by or on behalf of the Builder for the Project are the sole property of the Owner free of any retention rights of the Builder. The Builder hereby grants to the Owner an unconditional right to use, for any purpose whatsoever, any information, documents or electronic media prepared by or on behalf of the Builder for the Project, free of any copyright claims, trade secrets or other proprietary rights with respect to such documents.
- 20.3 **Disclosure Of Information.** The Builder shall not disclose any information it receives from the Owner to any other person or entity except to the extent necessary to allow it to perform its duties under this Contract For Construction.
- 20.4 **Instructions To Employees.** Because it is difficult to separate proprietary and confidential information from that which is not, the Builder shall instruct its employees and agents to regard all information which is not in the public domain as information which is proprietary and confidential.
- 20.5 **Non-Publication.** Submission or distribution of documents to meet official regulatory requirements or for other required purposes in connection with the Project is not to be construed as publication in derogation of the Owner's common law copyrights or other reserved rights.

ARTICLE 21

GENERAL INSURANCE REQUIREMENTS

- 21.1 **General Insurance Requirements.** Unless otherwise required, each insurance policy:

- (i) shall be issued by an insurance carrier acceptable to the Owner;
- (ii) shall be kept in force throughout performance of the Builder's services and for one year after the end of such performance;
- (iii) shall be an occurrence policy; and
- (iv) shall be evidenced by a certificate of insurance acceptable to the Owner which provides that the coverage evidenced thereby shall not be substantially modified or canceled without twenty-eight calendar days' prior written notice to the Owner.

21.2 **Certificates Of Insurance.** Prior to performance of services on the Project, the Builder shall (i) have all required insurance coverage in effect; and (ii) deliver to the Owner certificates of insurance for all its required minimum insurance coverage. The Builder shall (i) require that its subcontractors, and suppliers have similar coverage in effect, and prior to the performance of any services on the Project by the Builder's subcontractors and suppliers, and (ii) shall ensure that all required insurance coverages of its subcontractors and suppliers is in effect. The Owner shall have no responsibility to verify compliance by the Builder or its subcontractors and suppliers. Upon the request of the Owner, the Builder shall deliver to the Owner certificates of insurance and/or copies of policies for all required insurance coverage.

21.3 **Effect Of Insurance.** Compliance with insurance requirements shall not relieve the Builder of any responsibility to indemnify the Owner for any liability to the Owner as specified in any other provision of this Contract For Construction, and the Owner shall be entitled to pursue any remedy in law or equity if the Builder fails to comply with the contractual provisions of this Contract For Construction. Indemnity obligations specified elsewhere in this Contract For Construction shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim; or (ii) refusal to defend any named insured.

21.4 **Waiver Of Subrogation.** The Builder hereby releases and discharges the Owner and the Owner's Related Parties of and from all liability to the Builder, and to anyone claiming by, through or under the Builder, by subrogation or otherwise, on account of any loss or damage to tools, machinery, equipment or other property, however caused.

ARTICLE 22

GENERAL BOND REQUIREMENTS

22.1 **General Bond Requirements.** If the Builder is required to provide performance and payment bond(s), the penal sum of each bond shall be in an amount not less than the Construction Price, as adjusted by any change order(s), and each bond shall:

- (i) be in a form approved by the Owner;
- (ii) incorporate by reference the terms of this Contract For Construction;
- (iii) be executed by a company certified by the Secretary of the United States Department of Treasury pursuant to the Act of July 30, 1947 (61 Stat. 646, as amended; 6 U.S.C. 6-13);
- (iv) be executed by a company licensed and authorized to do business in the state in which the Project is located; and
- (v) be accompanied by a power of attorney certifying that the person(s) executing the bond have the authority to do so.

22.2 **Delivery Of Bonds.** The Builder shall deliver any required bond(s) and power(s) of attorney to the Owner prior to commencement of the Work.

ARTICLE 23 OWNER'S RIGHT TO STOP WORK

23.1 **Cease And Desist Order.** If the Builder fails or refuses to perform or fails to correct defective Work as required, or persistently fails to carry out the Work in accordance with the Contract For Construction, the Owner may, by written notice, order the Builder to cease and desist in performing the Work or any portion of the Work until the cause for the order has been eliminated to the satisfaction of the Owner. Upon receipt of such instruction, the Builder shall immediately cease and desist as instructed by the Owner and shall not proceed further until the cause for the Owner's order has been corrected, no longer exists, or the Owner instructs that the Work may resume.

23.1.1 The Builder shall not be entitled to an adjustment in the time for performance or the Construction Price under this clause since such stoppages are considered to be the fault of the Builder.

23.1.2 The right of the Owner to stop Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Builder or others.

23.1.3 In the event the Owner issues instructions to cease and desist, and in the further

event that the Builder fails and refuses with seven calendar days to provide adequate assurance to the Owner that the cause of such instructions will be eliminated or corrected, then the Owner shall have the right, but not the obligation, to carry out the Work or any portion of the Work with its own forces, or with the forces of another builder, and the Builder shall be responsible for the cost of performing such Work by the Owner.

23.1.4 The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the Builder.

ARTICLE 24 TERMINATION OR SUSPENSION OF CONTRACT FOR CONSTRUCTION

24.1 Termination For Cause By Owner.

24.1.1 The Owner may terminate this Contract For Construction for cause if the Builder materially breaches this Contract For Construction by:

- (i) refusing, failing or being unable to properly manage or perform on any Project;
- (ii) refusing, failing or being unable to supply the Project with sufficient numbers of workers, properly skilled workers, proper materials, or maintain applicable schedules;
- (iii) refusing, failing or being unable to make prompt payment to subcontractors or suppliers;

- (iv) disregarding laws, ordinances, rules, regulations or orders of any public authority or quasi-public authority having jurisdiction over the Project;
- (v) refusing, failing or being unable to substantially perform in accordance with the terms of the Contract For Construction as determined by the Owner, or as otherwise defined elsewhere herein, or
- (vi) refusing, failing or being unable to substantially perform in accordance with the terms of any other agreement between the Owner and Builder.

24.1.2 Upon the occurrence of any of the events described in Paragraph 24.1.1, the Owner may give written notice to the Builder setting forth the nature of the default and requesting cure within seven calendar days from the date of notice. At any time thereafter, if the Builder fails to initiate the cure or if the Builder fails to expeditiously continue such cure until complete, the Owner may give written notice to the Builder of immediate termination, and the Owner, without prejudice to any other rights or remedies, may take any or all of the following actions:

- (i) complete all or any part of the Work, including supplying workers, material and equipment which the Owner deems expedient to complete the Work;
- (ii) contract with others to complete all or any part of the Work, including supplying workers, material and equipment which the Owner deems expedient to complete the Work;

- (iii) take such other action as is necessary to correct such failure;
- (vi) take possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the Builder;
- (v) directly pay the Builder's subcontractors and suppliers compensation due to them from the Builder;
- (vi) finish the Work by whatever method the Owner may deem expedient; and
- (vii) require the Builder to assign the Builder's right, title and interest in any or all of Builder's subcontracts or orders to the Owner.

24.1.3 If the Owner terminates the Contract For Construction for cause, and the Owner takes possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the Builder, the Builder's compensation shall be increased by fair payment, either by purchase or rental at the election of the Owner, for any materials, tools, construction equipment and machinery items retained, subject to the Owner's right to recover from the Builder the Owner's damages resulting from the termination.

24.1.4 If the Owner terminates this Contract For Construction for cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, then in such event, said termination shall be deemed a termination for convenience as set forth in Paragraph 24.3.

24.2 Termination For Cause By Builder.

24.2.1 The Builder may terminate this Contract For Construction for cause if the Owner materially breaches this Contract For Construction by:

- (i) refusing, failing or being unable to make prompt payment to the Builder without just cause;
- (ii) disregarding laws, ordinances, rules, regulations or orders of any public authority of quasi-public authority having jurisdiction over any Project; or refusing, failing or being unable to substantially perform in accordance with the terms of this Contract For Construction or any other agreement between the Owner and the Builder.

24.2.2 Upon the occurrence of any of the events described in Paragraph 24.2.1, the Builder may give written notice to the Owner setting forth the nature of the default and requesting cure within seven calendar days from the date of notice. If the Owner fails to cure the default within seven calendar days, the Builder, without prejudice to any rights or remedies, may give written notice to the Owner of immediate termination.

24.3 Termination Or Suspension For Convenience. The Owner may at any time give written notice to the Builder terminating this Contract For Construction or suspending the Project, in whole or in part, for the

Owner's convenience and without cause. If the Owner suspends the Project for convenience, the Builder shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of suspension.

24.4 Builder's Compensation When Builder Terminates For Cause Or Owner Terminates For Convenience. If this Contract For Construction is (i) terminated by the Builder pursuant to Paragraph 24.2; (ii) terminated by the Owner pursuant to Paragraph 24.3; or (iii) suspended more than three months by the Owner pursuant to Paragraph 24.3, the Owner shall pay the Builder specified amounts due for Work actually performed prior to the effective termination date and reasonable costs associated with termination. The Owner may agree to additional compensation, if any, due to the Builder. Absent agreement on the additional amount due the Builder, the Owner shall pay the Builder:

- (i) reasonable costs incurred in preparing to perform the terminated portion of the Work, and in terminating the Builder's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided, however, that if it appears that the Builder would not have profited or would have sustained a loss if the Work had been completed, no profit shall be allowed or included, and the amount of compensation shall be reduced to reflect the anticipated rates of loss, if any; and

- (ii) reasonable costs of settling and paying claims arising out of the termination of subcontracts or supplier orders. These costs shall not include amounts paid in accordance with other provisions hereof.

24.5 Builder's Compensation When Owner Terminates For Cause. If this Contract For Construction is terminated by the Owner for cause pursuant to Paragraph 24.1, no further payment shall be made to the Builder until Final Completion of the Project. At such time, the Builder shall be paid the remainder of the Construction Price less all costs and damages incurred by the Owner as a result of the default of the Builder, including liquidated damages applicable thereto. The Builder shall additionally reimburse the Owner for any additional costs or expenses incurred.

24.6 Limitation On Termination Compensation. Irrespective of the reason for termination or the party terminating, the total sum paid to the Builder shall not exceed the Contract Construction Price, as properly adjusted, reduced by the amount of payments previously made and penalties or deductions incurred pursuant to any other provision of this Contract For Construction, and shall in no event include duplication of payment.

24.7 Builder's Responsibility Upon Termination. Irrespective of the reason for termination or the party terminating, if this Contract For Construction is terminated, the Builder shall, unless notified otherwise by the Owner,

- (i) immediately stop work;

- (ii) terminate outstanding orders and subcontracts;
- (iii) settle the liabilities and claims arising out of the termination of subcontracts and orders; and
- (iv) transfer title and deliver to the Owner such completed or partially completed Work, and, if paid for by the Owner, materials, equipment, parts, fixtures, information and such contract rights as the Builder has.

24.8 **Lack Of Duty To Terminate.** The right to terminate or suspend the Work shall not give rise to a duty on the part of either the Owner or the Builder to exercise that right for the benefit of the Owner, the Builder or any other persons or entities.

24.9 **Limitation On Termination Claim.** If the Builder fails to file a claim within one year from the effective date of termination, the Owner shall pay the Builder only for services actually performed and expenses actually incurred prior to the effective termination date.

ARTICLE 25 APPLICABLE LAW AND DISPUTE RESOLUTION

25.1 **Applicable State Law.** This Contract For Construction shall be deemed to be entered into in and shall be interpreted under the laws of the state in which the Project is located.

25.2 **Court Actions.** Except as expressly prohibited by law:

- (i) all legal actions hereunder shall be conducted only in state court or federal court districts where the Project is located and having subject matter jurisdiction over the matter in controversy; except that any final judgment may be enforced in other jurisdictions in any manner provided by law;
- (ii) the choice of jurisdiction and venue described in the preceding paragraph shall be mandatory and not permissive in nature, thereby precluding the possibility of litigation or trial in any jurisdiction or venue other than that specified herein;
- (iii) the parties waive any right to assert the doctrine of forum *non conveniens* or to object to venue; and
- (iv) the parties waive any right to a jury trial, and agree that all legal actions shall be tried, both as to factual and legal issues, only to the Court.

25.3 **Mutual Discussion.** In case of any dispute, claim, question or disagreement arising from or relating to the Project or arising out of this Contract For Construction or the breach thereof, the parties shall first attempt resolution through mutual discussion.

25.4 **Facilitative Mediation.** If the parties cannot resolve any dispute, claim, question, or disagreement arising from or relating to the Project or arising out of this Contract For Construction or the breach thereof through mutual discussion, as a condition precedent to any litigation, the parties shall in good faith participate in private, non-binding facilitative mediation seeking a just and equitable solution satisfactory to all parties.

25.4.1 All parties to a mediation shall promptly provide all other parties to the mediation with copies of essential documentation relevant to the support or defense of the matter being mediated.

25.4.2 The parties shall not be required to mediate for a period greater than ninety-one calendar days unless otherwise agreed to in writing by the parties. The parties

shall share equally any administrative costs and fees of such proceedings, but shall each be responsible for their own expenses otherwise incurred.

25.4.3 In the event that the statute of limitations would run during the required mediation period, either party may institute litigation so as to avoid the running of such statute upon the condition that such party immediately seek a stay of such litigation pending the conclusion of the mediation period.

25.4.4 During the course of mediation, any party to the mediation may apply for injunctive relief from any court of competent jurisdiction until the mediation period expires or the dispute is otherwise resolved.

25.4.5 The Owner, the Professional(s), the Builder, and any other parties involved in any way in the design or construction of the Project are bound, each to each other, by this requirement to mediate prior to commencement of any litigation, provided that they have signed this Contract For Construction or an agreement that incorporates this Contract For Construction by reference or signed any other agreement which binds them to mediate. Each such party agrees that it may be joined as an additional party to a mediation involving other parties under any such agreement. In the case where more than one mediation is begun under any such agreement and any party contends that the mediations are substantially related, the mediations may be conducted by the mediator selected in the first mediation which was commenced.

25.5 **Conflicting Dispute Resolution Provisions.** Neither party to this Contract For Construction shall enter into any contract with regard to the Project which directly or indirectly gives the right to resolve any dispute with, involving, or affecting the other to any other person or legal entity which is in conflict with the dispute resolution procedures required by this Article.

- 25.6 **Arbitration Preclusion.** In case of a dispute relating to the Project, or arising out of this Contract For Construction, no party to this Contract For Construction shall be required to participate in or be bound by, any arbitration proceedings.
- 25.7 **Performance During Dispute Resolution.** The Owner and the Builder agree that pending the resolution of any dispute, controversy, or question, the Owner and the Builder shall each continue to perform their respective obligations without interruption or delay, and the Builder shall not stop or delay the performance of the Work.

ARTICLE 26 DAMAGES AND REMEDIES

- 26.1 **Builder's Repair.** The Builder shall, at its expense, promptly correct, repair, or replace all goods, products, materials, systems, labor and services which do not comply with the warranties and guarantees set forth in this Contract For Construction, or any other applicable warranty or guarantee.
- 26.2 **Builder's Reimbursement.** The Builder shall promptly reimburse the Owner for any expenses or damages incurred by the Owner as a result of (i) the Builder's failure to substantially perform in accordance with the terms of this Contract For Construction; (ii) deficiencies or conflicts in the Construction Documents attributable to the Builder or of which the Builder was or should have been aware; (iii) breach of the warranties and guarantees set forth in this Contract For Construction or any other applicable warranty or guarantee; or (iv) other acts or omissions of the Builder.
- 26.3 **General Indemnity.** To the fullest extent permitted by law the Builder shall secure, defend, protect, hold harmless, and indemnify the Owner and the Owner's Related Parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, and regardless of the legal theories upon which premised, including, but not limited to, those actually or allegedly arising out of bodily injury to, or sickness or death of, any person, or property damage or destruction (including loss of use), which may be imposed upon, incurred by or asserted against the Owner or the Owner's Related Parties allegedly or actually arising out of or resulting from the Builder's services, including without limitation any breach of contract or negligent act or omission (i) of the Builder; or (ii) of the Builder's subcontractors or suppliers, or (iii) of the agents, employees or servants of the Builder or its subcontractors or suppliers.
- 26.3.1 To the fullest extent permitted by law, the Builder, for itself and for its subcontractors and suppliers, and the respective agents, employees and servants of each, expressly waives any and all immunity or damage limitation provisions available to any agent, employee or servant under any workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts, to the extent such statutory or case law would otherwise limit the amount

recoverable by the Owner or the Owner's Related Parties pursuant to the indemnification provision contained in the paragraph above.

- 26.4 **Intellectual Property Indemnity.** To the fullest extent permitted by law, the Builder shall defend, protect, hold harmless, and indemnify the Owner and the Owner's Related Parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the Owner or Professional(s) in writing. If the Builder has reason to believe the use of a required design, process or product is an infringement of a patent, the Builder shall be responsible for such loss unless such information is promptly given to the Owner.
- 26.5 **Non-Exclusivity Of Owner's Remedies.** The Owner's selection of one or more remedies for breach of this Contract For Construction contained herein shall not limit the Owner's right to invoke any other remedy available to the Owner under this Contract For Construction or by law.
- 26.6 **Waiver Of Damages.** The Builder shall not be entitled to, and hereby waives any monetary claims for or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any indirect consequential damages.
- 26.7 **Interest.** The Owner is entitled to interest on all amounts due from the Builder that remain unpaid thirty days after the amount is deemed due, whether as a result of a resolution of a dispute or otherwise. Any such interest shall be calculated by the same method as set forth in Paragraph 15.8.

ARTICLE 27

MISCELLANEOUS PROVISIONS

- 27.1 **Integration.** This Contract For Construction represents the entire and integrated agreement between the Owner and the Builder, and supersedes all prior negotiations, representations or agreements, either written or oral, for the Project. This Contract For Construction may be amended only by written instruments signed by both the Owner and the Builder, and is subject to such reasonable modifications as may be required by the Owner's lender(s) or insurer(s), if any.
- 27.2 **Severability.** If any provision of this Contract For Construction, or the application thereof, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions shall remain valid and enforceable.
- 27.3 **Waiver.** No provision of this Contract For Construction may be waived except by written agreement of the parties. A waiver of any provision on one occasion shall not be deemed a waiver of that provision on any subsequent occasion, unless specifically

stated in writing. A waiver of any provision shall not affect or alter the remaining provisions of this Contract For Construction.

- 27.4 **Strict Compliance.** No failure of the Owner to insist upon strict compliance by the Builder with any provision of this Contract For Construction shall operate to release, discharge, modify, change or affect any of the Builder's obligations.
- 27.5 **Third-Party Beneficiaries.** This Contract For Construction shall inure solely to the benefit of the parties hereto and their successors and assigns, and, except as otherwise specifically provided in this Contract For Construction, nothing contained in this Contract For Construction is intended to or shall create a contractual relationship with, or any rights or cause of action in favor of, any third party against either the Owner or the Builder.
- 27.6 **Survival.** All provisions of this Contract For Construction which contain continuing obligations shall survive its expiration or termination.
- 27.7 **Assignment.** Except as prohibited by applicable law, neither party shall assign any or all of its benefits or executory obligations under this Contract For Construction without the approval of the other party, except in case of assignment solely for security or assignment by the Owner to a Related Party of the Owner, or except as otherwise specifically provided for in this Contract For Construction in case of default. The Owner and the Builder bind their successors and assigns to the other party to this Contract For Construction.
- 27.8 **Execution Of Documents.** Upon the request of the Owner, the Builder shall execute documents required by the Owner's lender whereby the Builder agrees that in the event of the Owner's default under, or the termination of, any construction loan agreement, the Builder will complete the services required by this Contract For Construction under the terms and conditions contained herein so long as the lender fulfills the obligations of the Owner toward the Builder as set forth in this Contract For Construction.

ARTICLE 28 DEFINITIONS

When one of the following capitalized words, terms or phrases is used in this contract, it shall be interpreted or construed first as defined below, second according to its generally accepted meaning in the construction industry, and third according to its common and customary usage.

Builder: An entity, including but not limited to a general contractor, a trade contractor or a construction manager, engaged directly by the Owner pursuant to a Contract For Construction.

Construction Price: The dollar amount for which a Builder agrees to perform the Work set forth in a Contract For Construction.

Construction Documents: Plans, specifications, change orders, revisions, addenda, and other information which set forth in detail the Work.

Construction Schedule: The timetable which sets forth pertinent dates for timely completion of the Work.

Contract For Construction: A written agreement between the Owner and a Builder for provision of goods, products, materials, equipment, systems, management, supervision, labor and services required to construct all or part of a Project.

Contract For Professional Services: A written agreement between the Owner and a Professional for provision of services and related items required to design or engineer all or part of a Project.

Declaration Of Substantial Completion: Document declaring the Work substantially complete and suitable for occupancy or beneficial use by the Owner.

Final Completion: The stage of construction when the Work has been completed in accordance with the Contract For Construction and the Owner has received all documents and items necessary for closeout of the Work.

Hazardous Substances: The term "Hazardous Substance" shall have the same meaning and definition as set forth in the Comprehensive Environmental Response Compensation and Liability Act as amended, 42 U.S.C. § 6901 *et seq*, and regulations promulgated thereunder (collectively "CERCLA") and any corresponding state or local law or regulation, and shall also include: (a) any Pollutant or Contaminant as those terms are defined in CERCLA; (b) any Solid Waste or Hazardous Constituent as those terms are defined by, or are otherwise identified by, the Resource Conservation and Recovery Act as amended, 42 U.S.C. § 6901 *et seq*, and regulations promulgated thereunder (collectively "RCRA") and any corresponding state or local law or regulation; (c) crude oil, petroleum and fractions of distillates thereof; (d) any other material, substance or chemical defined, characterized or regulated as toxic or hazardous under any applicable law, regulation, ordinance, directive or ruling; and (e) any infectious or medical waste as defined by any applicable federal or state laws or regulations.

Owner's Related Parties: Any parent, subsidiary or affiliated entities of the Owner, including the respective officers, trustees, office holders, directors, shareholders, partners, and employees of each.

Professional: An entity, including but not limited to an architect, civil engineer or geotechnical engineer, engaged directly by the Owner to provide design or engineering services.

Project: A planned construction undertaking as more specifically described immediately preceding the recitals in Chapter 1 of a Contract For Professional Services or in a Contract For Construction.

Project Design Schedule: The timetable which sets forth the required relationships between, and pertinent dates for, required completion of design and engineering services, documents and related activities.

Site: The geographical location of a Project, usually defined by legal boundary lines, and the location characteristics including, but not limited to, grades and lines of streets, alleys, pavements and adjoining structures, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, existing buildings and improvements, and service and utility lines.

Substantial Completion: The stage of construction when the Owner can occupy or beneficially use satisfactorily completed Work for its intended purpose.

Total Project Construction Cost: The total cost to the Owner to complete construction of the Project, including, without limitation, the Work, the cost of utilities, the cost of fees for permits and licenses, and modifications necessitated by local conditions.

Work: Any and all computers, construction machinery, documents, equipment, facilities, fixtures, furnishings, goods, heat, items, labor, licenses, management, materials, permits, products, services, supervision, supplies, systems, taxes, testing, tools, utilities, transportation, vehicles, and water, required to be performed or supplied and/or necessary for proper execution and completion of the Project, or some portion thereof, whether or not incorporated or to be incorporated into the Project; provided, however, that Work does not include performance of pre-construction services by a Construction Manager.



CONSTRUCTION OWNERS
ASSOCIATION OF AMERICA, INC.

CONTRACT FOR CONSTRUCTION
(AT-RISK CONSTRUCTION MANAGEMENT
GUARANTEED MAXIMUM PRICE FORM)

CHAPTER 1
BUILDER'S AGREEMENT

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